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THE

INDIAN CRIMINAL DIGEST,

CONTAINING ALL THE IMPORTANT CRIMINAL RULINGS OF THE VARIOUS

HIGH COURTS IN INDIA

SINCE 1862,

TOGETHER WITH MANY ENGLISH CASES WHICH BEAR ON THE CRIMINAL LAW AS ADMINISTERED IN INDIA.

IN FOUR PARTS.

I. Indian Penal Code.
II. Evidence.
III. Criminal Procedure.
IV. Special and Local Acts.

BY

J. T. HUME,

SOLICITOR HIGH COURT, AND FOR TWELVE YEARS IN CHARGE OF GOVERNMENT PROSECUTIONS IN CALCUTTA.

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PREFACE.

In this book will be found all the important Criminal Rulings contained in the following reports :—

Bengal Law Reports, Vol. 1 to 15
Bombay Reports, Vol. 1 to 12
Bourke's Reports
Calcutta Law Reports, Vol. 1 to 13
Hyde's Reports, Vol. 1 and 2
Indian Jurist (New Series)
Indian Jurist (Old Series)
Indian Law Reports (Allahabad Series), Vol. 1 to 5
Indian Law Reports (Bombay Series), Vol. 1 to 6
Indian Law Reports (Calcutta Series), Vol. 1 to 10
Indian Law Reports (Madras Series), Vol. 1 to 6
Madras Reports, Vol. 1 to 8
Marshall's Reports
North Western Provinces High Court Reports (Allahabad Series), Vol. 1 to 7
North Western Provinces High Court Reports (Agra Series), Vol. 1 to 3
Sutherland's Weekly Reporter, Vol. 1 to 26
Sutherland's Special number of the Weekly Reporter containing Rulings of the High Court from January to July 1864.
Sutherland's Special number of the Weekly Reporter containing the Full Bench Rulings of the High Court from July 1862 to July 1864.
Weir's (Law of Offences and Criminal Procedure (Criminal Rulings), 2nd Edition, 1882.

In several of the most important cases, the judgments have been given in full. Many English cases have been added which bear on the Criminal Law as administered in India. The book is divided into four parts: (1) The Penal Code; (2) Evidence; (3) The Criminal Procedure Code; (4) Special and Local Acts, and the subjects have been arranged alphabetically. I trust the book will be found useful to all those who are in any way connected with the administration or practice of the Criminal Law in India.

J. T. HUME.

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DIGEST OF CRIMINAL CASES

INDIAN PENAL CODE.

ABDUCTION, KIDNAPPING, SLAVERY, ETC.

Reg. v. Amgad Bageah, 2 S. W. R. Cr. 61.

The consent of a girl under 16 years kidnapped or abducted to compel her marriage, does not affect the offence, nor is it necessary that the taking or enticing should be shown to be by means of force or fraud.

Reg. v. Asken, S. W. R. 1864, Cr. 12.

A husband, or those who aided him, cannot be convicted of kidnapping for taking away his own wife, but they are guilty of rioting if they take possession of her by force and in the darkness of night.

Reg. v. Bhungee Aheer, 2 S. W. R. Cr. 5.

The consent of a kidnapped person is immaterial; and it is not necessary for a conviction, under Section 361, Penal Code that the taking or enticing should be shown to have been by means of force or fraud.

Reg. v. Dhunnoo Narain Moitro & others 1 S. W. R. Cr. 39.

The subject of an Independent State, though not amenable to the British Court on a charge of Culpable Homicide committed out of British Territories, may be so amenable on a charge of kidnapping from those Territories.

Reg. v. Doorga Doss & others, 7 S. W. R. Cr. 104.

The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping. There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution.

Reg. v. Gooroo Doss Rajbunsee, 4 S. W. R. Cr. 7.

A person in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by her father who, after permitting her to reside occasionally in his house, suddenly changed his mind and broke off the marriage, is guilty of kidnapping from lawful guardianship punishable under Section 363 of the Penal Code.

Reg. v. Gundar Singh, 4 S. W. R. Cr. 6.

To bring a case under Section 361 of the Penal Code, there must be a taking or enticing of a child out of the keeping of its lawful guardian without his consent.

Reg. v. Isree Panday and others, 7 S. W. R. Cr. 56.

Where a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under Section 363 of the Penal Code only, and of the latter under Section 368 only, while the separate conviction of both under section 366 was quashed.

Reg. v. Firman Ali, 16 S. W. R. Cr. R. 63.

The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge under section 370, Penal Code, of having detained a woman against her will as a slave.

Reg. v. Mohim Chunder Sil, 16 S. W. R. Cr. R. 42.

There can be no conviction of the offence of kidnapping under section 366 of the Penal Code, unless it is proved that the accused has taken the girl out of the keeping or custody of her lawful guardian without her consent.

Reg. v. Mirza Sikundur Bhukut, 3 N. W. P. 146.

If knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code.

Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent or guardian or a jailor.

Reg. v. Neela Bibee and another, 10 S. W. R. Cr. R. 33.

To support a conviction for kidnapping under sections 361 and 363 of the Penal Code, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.

Reg. v. Shama Sheikh 8 S. W. R. Cr. R. 35.

The offence described in section 363 of the Penal Code is included in that described in section 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section.

Reg. v. Sheikh Oozeer, 6 S. W. R. Cr. 17.

Section 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not the kidnappers.

Reg. v. Sookee, 7 S. W. R. Cr. 36.

Under section 361 of the Penal Code (kidnapping from lawful guardianship) the consent of a minor is immaterial, nor do force and fraud form elements of the offence.

Reg. v. Gopi Mohun Mitter, 22 S. W. R. Cr. R. 26.

The offence of kidnapping can be lawfully compounded. Where a charge of such an offence was withdrawn by the complainant, it was held that under section 188 of the Code of Criminal Procedure (Act X of 1872) it had the effect of acquittal.

(See section 345, Act X of 1882 for the list of offences which may now be compounded.)

Empress v. Pemantle, 8 I. L. R. Calc. 971.

The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child, to a person, who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of section 361 of the Penal Code.

The explanation of the words "lawful guardian" in section 361 is intended to obviate the difficulty the prosecution might be put to in cases of abduction, that the person from whose care the minor had been abducted was the guardian of such minor within the meaning of the legal acceptation of the word.

Reg. v. Buldeo and another, 2 N. W. P. Rep. All. 286.

To constitute the offence of kidnapping, under section 363 of the Indian Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is the guardianship of a person who is lawfully entrusted with the care or custody of a minor.

Reg. v. Jhurrup and others, 5 N. W. P. Rep. All. 133.

The mere fact of a girl being received into a house and retained there by the owner, even after they have become aware or found reason to believe that she had been kidnapped, does not amount to concealment of her, unless an intention of keeping her out of view be apparent.

Reg. v. Mussumat Chubbooa and others, 5 N. W. P. Rep. All. 189.

The mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person, with the object of baffling any search that might be made for her.

Reg. v. Mungroo and Puttroo, 6 N. W. P. Rep. All. 293.

Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and is not done with an intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence, and should not form the subject of a separate conviction and sentence.

Reg. v. Samia Kaundan, 1 I. L. R. Mad. 173.

Accused was convicted by the Magistrate of abetting the kidnapping of a minor. Accused knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. Held by the High Court, that so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping

might be abetted, and that in the present case the conviction should be of an offence punishable under sections 363 and 116 of the Penal Code.

Empress v. Umsadraksh, 3 I. L. R. Bom. 178.

A child under ten years of age is, *primâ facie*, subject to guardianship, and any one removing such child without permission properly obtained, takes the risk of such act upon himself; the fact of having omitted to inquire whether the child had a guardian or not, is no defence to a charge of kidnapping a minor from lawful guardianship under section 361 of the Indian Penal Code.

Noujan, Appellant, 7 Mad. Rep. 375.

A prisoner, tried, convicted and punished under section 369 of the Indian Penal Code of abducting a child with intent dishonestly to take moveable property cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction; and the second punishment for a theft is by the present Code of Criminal Procedure (Act X of 1872) illegal.

Reg. v. Mussamut Bhoodia, 8 S. W. R. Cr. R. 3.

The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature.

Reg. v. Gondur Singh, 5 Rev. Jud. and Pol. Journal, 152.

A charge of kidnapping from lawful guardianship cannot be sustained in case of a runaway enticed, after a voluntary abandonment of her home, to emigrate.

GLOVER, *J.*—I doubt whether the prisoner can be punished under section 361. The girl Itwarea, according to her own statement, had run away from her father's house in consequence of ill-treatment on the part of her mother, and meeting the prisoner on the road, had agreed to take service as a coolie. The place where the prisoner lived, and to which the girl was taken, was a populous suburb, where there were many houses and where she could easily have called for and obtained assistance had she been unwilling to remain. This, however, does not affect the prisoner's case, and I only mention the circumstance, as the Sessions Judge has laid some stress upon it. Was the girl, then under her father's guardianship when she fell in with the prisoner? I think not; she had voluntarily abandoned her home, and was running away; she was 14 years old, and not, therefore, of such tender age as to lead to the supposition that she had strayed from home, and was to all appearance a free agent. She, when taken before the Magistrate, asserted that her parents were dead, and that she was going with her mother-in-law to Sylhet and Cachar. She now states that the prisoner made "eyes" at her, and frightened her into saying what she did, but this is an unsupported statement, and the girl's manner before the Magistrate must, as that official observes, have been satisfactory, or he would not have signed her registry ticket. To bring the prisoner under section 361, there must be a taking of the child out of the possession of the parent, and such a taking is not, in my judgment, disclosed by the evidence in this case.

KEMP, *J.*—I concur: there was no taking or enticing the girl out of the keeping of her lawful guardian against his consent. The prisoner must be released.

Reg. v. Timmins, 30 L. J. N. S. M. C. 45.

The prisoner induced an unmarried girl under sixteen years old to leave her father's house, and meet him by appointment, without her father's consent. The prisoner and the girl cohabited three days and nights, and then parted by consent, and the girl returned home. The jury found the prisoner guilty, and that he took the girl away with him in order to gratify his passions, and then to allow her to return home, but not with the view of keeping her from her home permanently:—Held, that there was sufficient evidence for the jury to warrant the conviction.

ELLE, *J.*—We are all of opinion that the conviction ought to be affirmed. The statute was passed for the protection of parental rights. It is perfectly clear law that any disposition of the girl, or any consent or forwardness on her part are immaterial on the question of the prisoner's liability under this section. The difficulty arises on the point whether the prisoner has taken her out of the possession of her father, within the meaning of the statute. The prisoner took the girl from her father, from under his roof, and away from his control, for three days and nights, and cohabited with her during that time, and placed her in a condition quite inconsistent with her being at the time in her father's possession. We think that in these facts there is enough to justify the jury in finding that he took her from the possession of her father, even though he intended her to return to him. The offence under this enactment may be complete almost at the instant when the girl passes the threshold of her father's house, as where the facts shew that the man who takes her away has an intention of keeping her permanently. We do not mean to say that a person would be liable to an indictment if the absence of the girl whom he takes away is intended to be temporary only, and capable of being explained, and not inconsistent with her being under the parental control. All we say is that there is in the present case sufficient evidence for the jury to act upon.

The rest of the Judges concurred.

Conviction confirmed.

Reg. v. Howes, 30 L. J. N. S. 47.

Up to the age of sixteen, a female child has no right to withdraw herself from the custody of her father against his will; and if she do so, this Court will order her to return to, or be restored to, her father, where there is no reason to suppose that he will not exercise proper parental control.

Reg. v. Hibbert, 1 L. R. C. C. 184.

A. met a girl in the street going to school, and induced her to go with him to a town some miles distant, where he seduced her. They returned together and he left her where he met her. The girl then went to her home, where she lived with her father and mother, having been absent some hours longer than would have been the case if she had not met A. A. made no inquiry, and did not know who the girl was, or whether she had a father or mother living or not, but he had no reason to, and did not believe that she was a girl of the town:—Held, that A. was not guilty of having unlawfully taken the girl out of the possession of her father under section 55 of 24 and 25 Vict. C. 100.

Mallinson v. Mallinson, 1 L. R. P. and D. 221.

The Court has jurisdiction by its order to regulate the custody of children, until they attain the age of sixteen years.

Reg. v. Olifier, 10 Cox Crim. Law Cases, 402.

Any one dealing with an unmarried girl does so at his peril, and if she turn out to be under sixteen, is liable under the above Act (24 and 25 Vict. C. 100, S. 55.)

A man is not bound to return to her father's custody a girl who, without any inducement on his part, left her home and came to him; but if, at any time, he has attempted to induce her to leave home without her parent's consent, and she afterwards does so, he is guilty of the abduction of the girl, even though he disapproves of the act at the particular time at which she gives effect to his previous persuasions.

Bramwell, *B.* in stating the law of the case to the jury, said; "I am of opinion that if a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has got fairly away from home, and then goes to him, although it may be his moral duty to return her to her parent's custody, yet his not doing so is no infringement of this Act of Parliament, for the Act does not say he shall restore her, but only that he shall not take her away. It is, however, equally clear that, if the girl, acting under his persuasion leaves her father's house, although he is not present at the moment, yet, if he avails himself of that leaving which took place at his persuasion, that would be a taking her out of the father's possession, because the persuasion would be the motive cause of her leaving. Again, although she may not leave at the appointed time, and although he may not wish that she should have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father's custody, in my judgment he is also guilty, if his persuasion operated on her mind so as to induce her to leave."

Guilty.

Reg. v. Mycock, 12 Cox C. C. 28.

To support an indictment for the abduction of an unmarried girl under sixteen years of age, it is not necessary to prove that the person who abducted her knew her to be under sixteen, as the person who does so is bound to ascertain her age, and if she turns out to be under sixteen, he must take the consequences. A girl who is away from her home is still in the custody or possession of her father, if she intends to return. Reg. *v.* Olifier (10 Cox. C. C., 402) followed.

Reg. v. Booth 12 Cox, C. C. 231.

One who takes an unmarried girl under the age of sixteen years out of the possession and against the will of her father or mother, is guilty of an offence under 24 and 25 Vict. C. 100. S. 55, although he may not have had any bad motive in taking her away, nor means of ascertaining her age, and although she was willing to go.

Reg. v. Robins, Carringtons & Kirwan's, Rep. 456.

A. went in the night to the house of B. and placed a ladder against a window, and held it for J., the daughter of B. to descend, which she did, and then eloped with A. J. was a girl under sixteen, *viz.*, fifteen years old :— Held, that this was a "taking" of J. out of the possession of her father within the statute 9, Geo. 4, C. 31, S. 20 although J. had herself proposed to A. to bring the ladder and to elope with him. Held, also, that it was no defence for A. that he did not know that J. was under sixteen, or that from her appearance he might have thought she was of a greater age.

Reg. v. Primelt, 1 Foster & Finlayson's, Rep. 50.

On an indictment for unlawfully taking away a girl against the will of her parents, *held*, that if they have encouraged her in a lax course of life, the case does not come within the statute.

Reg. v. Green, 3 Foster and Finlayson's, Rep. 274.

When a girl under sixteen has been found in the streets by herself and seduced away, that is not a taking out of the possession of the father, even though he is living in the place and she lives with him.

Reg. v. Robb, 4 Foster & Finlayson's, Rep. 59.

If a man, by previous promises to a girl under sixteen as to what he will do if she will leave her parents' house and go to live with him, induces her at length to do so, and then receives and harbours her secretly, he is liable to be convicted under the statute (24 and 25 Vict. C. 100, S. 55) for taking her out of the possession of her parents, even although he does not meet her by any previous arrangement and is not otherwise actually a party to her act in leaving.

Reg. v. Manktelow, 22 L. J. N. S. M. C. 115.

A girl under sixteen having been persuaded by the prisoner to leave her father's house, and go away with him without her father's consent, in pursuance of the arrangement between them, left her home alone and went to a place appointed. There the prisoner met her. They then went away together to a distant place, not intending to return :— Held, that there was a "taking" of the girl by the prisoner within the meaning of the statute 9, Geo. 4, C. 31, S. 20 when he met her at the appointed place, and went away with her; and that there was then a taking of her out of the possession of her father, as until the prisoner took her, she had not absolutely renounced her father's protection, but would presumably have returned home had she failed to meet the prisoner.

JERVIS, *C. J.*—..... "There can be no question, upon the facts stated in the case, that when the prisoner met the girl at the appointed place there was then a taking of her. The statute was passed for the protection of parents. Then we come to the second point, whether she was taken out of the possession of her father. According to the opinion of Maule, *J.* in The Queen *v.* Kipps, it is not necessary that there should be an actual possession by the father. So long as she continues a member of her father's family and is under his control, she is in his possession. The facts of this case shew that there was a continu-

ing possession in the father. The girl, by the prisoner's persuasion, left her father's house for the particular purpose of meeting the prisoner. If she had not met him she would have returned home. The possession of the father, therefore, was only conditionally renounced. By the act of taking, the prisoner severed the connection between the girl and her father, and so took her out of his possession. This is in accordance with the decision of Maule, *J.* in The Queen *v.* Kipps."

The rest of the Court concurred.

Conviction supported.

Reg. v. Komul Dass, 2 S. W. R. Cr. R. 7.

A conviction of abduction quashed, no force or deceit having been practised on the person abducted.

Reg. v. Koordan Singh and Mohun Singh, 3 S. W. R. Cr. R. 15.

The abduction of a girl under sixteen years of age, with intent to marry &c., without the consent of her lawful guardian, is punishable under sections 363 and 366 of the Penal Code.—The consent of the kidnapped person is immaterial, nor is it necessary to show that the enticing or taking away was by force or fraud.

Reg. v. Modhoo Paul, 3 S. W. R. Cr. R. 9.

The abduction of a minor girl under sixteen years of age out of the custody of her lawful guardian is punishable under section 361 of the Penal Code. It is not necessary to such a conviction that the abduction was forcible.

Reg. v. Mussamut Bhoodea, 8 S. W. R. Cr. R. 3.

The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature.

Reg. v. Mussamut Oojeerun, 7 S. W. R. Cr. R. 98.

An enticing away of a child playing on a public road is kidnapping from lawful guardianship.

Reg. v. Sohoy Dome, 6 S. W. R. Cr. R. 2.

Case of abduction of a child for the purpose of stealing its ornaments, which instead of being committed to the Court of Sessions for trial, was improperly disposed of by the Magistrate as a case of theft.

Reg. v. Srimotee Poddee and others, 1 S. W. R. Cr. R. 45.

The conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under section 368 of the Penal Code to abetment under section 116.

Reg. v. Vaughan In re Ganesh Sundari Debi, 5 B. L. R. 418.

A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *Habeas Corpus* stated that a girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months) the Court held that she was

of years of discretion to choose for herself under whose protection she would remain.

Reg. v. Prince, L. R. 2 C. C. 154.

The prisoner was convicted under 24 and 25 Vict. C. 100, S. 55, of unlawfully taking an unmarried girl under the age of sixteen out of the possession and against the will of her father. It was proved that the prisoner did take the girl, and that she was under sixteen; but that he *bonâ fide* believed and had reasonable ground for believing that she was over sixteen:—Held by Cockburn, C. J., Kelly, C. B., Bramwell, Cleasby, Pollock, and Amphlett, B. B., Blackburn, Mellor, Lush, Grove, Quain, Denman, Archibald, Field and Lindley, J.J. Brett, J. dissenting, that the latter fact afforded no defence, and that the prisoner was rightly convicted.

Empress v. Prankrishna Surma, 8 I. L. R. Calc. 969.

A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A. and on the same day the daughter was married to B. the brother of A. without the father's consent, it was held that A. was rightly convicted under sections 109 and 363 of the Penal Code of abetting the offence of kidnapping.

Empress v. Ram Kuar, 2 I. L. R. All 723.

R. having obtained possession of D. a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. Held that R. could not be convicted of disposing of D. as a slave under section 370 of the Indian Penal Code. Reg. *v.* Mirza Sikundur Bukhut (H. C. R., N. W. P., 1871, p. 146) remarked upon.

Reg. v. Nourjan and Jaggat Tara, 6 B. L. R. Ap. 34; S. C. 14 S. W. R. Cr. R. 39.

S. a married Mahomedan girl under sixteen while living with N. her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindoos, with the knowledge of N.; S. and N. were then induced by the Hindoos to remove to another village that S. might take up the trade of a prostitute; they there met J. a public woman, with whom they went to reside, and who introduced visitors to S. and received the money paid by them, in exchange for the board and food supplied to S. and N. N. was convicted under section 372, Indian Penal Code, of disposing of a minor for the purpose of prostitution, and J. was convicted, under section 373, Indian Penal Code, of obtaining possession of a minor for the purpose of prostitution. Held per Jackson, J.—That on the facts proved no offence was committed under the Penal Code, Per Glover, J.—N. and J. were both guilty under sections 372 and 373 respectively, and their appeals should be dismissed.

Empress v. Srilal and others, 2 I L. R. All. 694.

Certain persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true. Held, per Stuart, C. J.

that such persons could not be convicted, on these facts, of offences under sections 372 and 373 of the Indian Penal Code. Per Oldfield, J. and Straight, J. that, if such girl was disposed of for the purposes of marriage, it could not be said, because the marriage might be invalid under Hindoo law, that such persons acted with the intention that she should be employed or used for the purposes of prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that she would be employed or used for such purpose, and consequently they could not be convicted of an offence under those sections. Per Pearson, J. and Spankie, J. that, such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindoo law, it did not appear that it was wholly invalid, and therefore such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections.

Reg. v Musammut Bhutia, 7 N. W. P. Rep. All. 295.

Section 373 of the Indian Penal Code is not applicable to a case where a man solicits a girl to have sexual intercourse with him, and having no other intention or purpose in view.

Reg. v. Aruna Chellam and others, 1 I. L. R. Mad. 164.

To constitute an offence under section 372 of the Indian Penal Code, it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person.

Padmavati Exparte, Appellant, 5 Mad. Rep. 415.

The prisoners were convicted, the one of disposing of, and the other of receiving two children, females, under the age of sixteen years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. Held:—That offences under sections 372 and 373 of the Indian Penal Code had been committed, and that the prisoners were properly convicted.

Present:—Holloway and Innes, J.J.....

"The disposing to, and the obtaining by Padmavati, a pagoda dancing girl, and the registration of the children as belonging to the pagoda, are undisputed, and the only question is whether the transaction is beyond all reasonable doubt such a disposing and obtaining as the section contemplates. In consultation with the Judges who did not take part in the disposal of this the first case of the kind which has come before us, we directed evidence to be taken of the mode of employment of pagoda dancing girls."

"The implicit admissions of the witnesses who resist the inference, no less than the direct evidence of those who assert that inference to be irresistible, renders it abundantly clear that girls so sold and so registered are brought up as prostitutes, and that one principal purpose of such a transaction is that they shall be so brought up. The argument that the treatment of such a transaction as criminal is impossible, because the

Hindoo religion sanctions the practice and the Private Law recognizes private rights as flowing from it, is manifestly of no weight. An offence is every transgression of a Penal Law, and a rule of Penal Law is a rule of Public Law, and necessarily overrides every precept of Private Law and cannot be affected by any argument derived from that Law. The fact of a transaction being in violation of Public Law may prevent the arising of rights which would otherwise have the sanction of Private Law, although Harvey *v.* Bridges (14 M. and W., 442) is an example of the contrary; but the fact that rights would, according to Private Law, spring from an act transgressing a precept of Penal Law can never prevent that act from being an offence.

With respect to the argument from religion, it is only necessary to observe that if the precepts of a particular religion enjoin acts which transgress the rules of Penal Law, these acts will clearly be offences.

Where the Legislature intended that acts which would otherwise be offences should not be so because connected with religious observances they have expressed that intention. (Penal Code, sec. 292.)

Reg. on the prosecution of Dowlath Bee v. Shaik Ali, 5 Mad Rep. 473.

The prisoner was tried upon a charge of having obtained possession of Dowlath Bee a minor, aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under section 373 of the Indian Penal Code. The evidence shewed that the prisoner met Dowlath Bee, a girl eleven years old, in a street at Triplicane and promised to give her a pice if she would accompany him into an uninhabited house close by and allow him to have sexual intercourse with her. The girl went willingly with the prisoner, and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connexion. —The jury convicted the prisoner. Held by the High Court that the case proved against the prisoner did not make out the offence charged.

SCOTLAND, C. J.—"Very careful consideration of the section under which the prisoner has been found guilty has removed my doubts and confirmed the impression I had formed before the trial as to its proper construction. I am now of opinion that the case proved against the prisoner does not make out the offence charged. It is not, essential to the offence that the buying, hiring or other obtaining of the possession of the minor should be from a third person. The language of the section is quite applicable to an agreement or understanding come to with the minor without the intervention of a third person, and the vice against which the section is directed is certainly not of any less enormity in the latter case. But to bring a case within the section, it is in my opinion essential to show that possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having the possession whether ostensibly for a proper purpose or not.—The words "buys" and "hires" convey that meaning according to their ordinary acceptation, and giving them due effect it seems to me that the associated

words "or otherwise obtains possession" were not intended to do more than include other modes of obtaining the same kind of possession as that of a buyer or hirer.—This, I think, is shown more clearly to be the meaning intended by the provision which follows as to the other essential of the offence,—the intent or knowledge of its being likely "that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose," indicating plainly as it does an employment or use of the minor at some time future to the obtaining of possession:—its effect is to my mind strong to show that complete possession and control of the minor's person obtained by buying, hiring or otherwise, with the intent or knowledge that, by the effect of such possession and control, the minor should or would afterwards be employed or used for either of the purposes stated, is what the section was intended to make punishable as a crime. The provision seems to me to exclude the supposition that an obtaining of possession in the sense in which that expression is, no doubt, sometimes used of merely having sexual connexion with a woman, could have been in the contemplation of the framers of the section.—This construction of the first part of the section when read by itself, is, I think rendered still more certain by the correlative terms of section 372 "whoever sells, lets to hire or otherwise disposes of any minor," for there can be no doubt that they impart a complete making over of the possession of the minor to the person buying or hiring. It follows that the sexual intercourse proved in the present case is not in my opinion an obtaining possession of the girl by hiring within the meaning of the section, and on this ground the conviction is unsustainable." ..... "With respect to the further point of the meaning of the words "for the purpose of prostitution" which it has been necessary to consider in deciding this case I have a clear opinion. Acts of improper sexual intercourse are acts of prostitution in one strict sense of the term. But proof of more than that I think is required. The ordinary and commonly understood meaning of the word prostitution is the offering of the person for promiscuous sexual intercourse with men, and that I think must be taken to be its meaning in the section, there being nothing in the context opposed to it, but rather the contrary. The words "employed or used" strike me as confirmatory of that being the only meaning intended.—If those words had been followed by the words "as a prostitute" no doubt could have arisen, and I see no indication that anything different was meant by the words "for the purposes of prostitution." Further, it is a weighty consideration in support of this construction as well as of that given to the first part of the section, that if not right there would be no stopping short of holding every man to be punishable under section 373, who had casual sexual intercourse with a willing girl under the age of sixteen, capable of giving consent or kept her as his mistress or concubine, even although the girl had been a common prostitute before he associated with her. Such an effect could not possibly have been intended. Obtaining a girl for the purpose of illicit intercourse with a man is made punishable by other sections of the Code, and this section I think, was intended to prevent trafficking in the employment or use of minors as prostitutes, or for a purpose both immoral and unlawful. The conviction I think should be annulled, and the prisoner set at liberty."

Reg. v. Jaili Bhavin 6 Bom. Rep. Crown Cases, 60.

Held, that the dedication of a minor girl under the age of sixteen years to the service of a Hindoo temple, by the performance of the Shej ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing it to be likely that she would be used for the purpose of prostitution, within the meaning of section 372 of the Indian Penal Code.

Empress v. Parameshwari Surma, 11 C. L. R. 6.

A Hindoo female child of about six years having been secretly removed by its mother in concert with the accused, and without the knowledge or consent of its father, given in marriage, the accused was charged and convicted under sections 109 and 363 of the Indian Penal Code with abetting the offence of kidnapping. Held, that there had been a taking of the child from the lawful guardianship of the father, and that the conviction was right. Although under ordinary circumstances, the custody of the mother of an infant child is the custody of the father, there is no authority in Hindoo law for the proposition that a mother can ever have a right to the custody of her legitimate children adverse to the father.

Reg. v. Askur and another, S. W. R. 1864, Cr. R. 12.

A husband or those who aided him cannot be convicted of kidnapping for taking away his own wife; but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence and in the darkness of night.

Reg. v. Ishwar Chandra Jogee and others, S. W. R. 1864 Cr. R. 21.

The prisoners having been sentenced for abetment of abduction of a woman under sections 109 and 498 of the Penal Code, and for wrongful confinement of her under section 342. Held, that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.

Proceedings of 11th April, 1881. Weir, 134.

The dedication of minors to the service of a temple as Dásis amounts to a disposal of such minors within the meaning of the section.

The question whether or not the disposal of the minor was effected with the intention or knowledge postulated by section 372 is a question of fact which must be determined according to the circumstances of each case.

Marakathum and others accused, Weir, 140.

The ruling in the above Proceedings of 11th April 1881 followed in a case in which the Bottor was not tied.

ABETMENT.

Reg. v. Askur, S. W. R. 1864 Cr. R. 12.

There can be no conviction for abetment of murder without proof of murder.

Reg. v. Boodhun Mooshur, 8 S. W. R. Cr. R. 78.

A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within clause 2, section 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under clause 3, section 107, and section 109, Penal Code, read together.

Reg. v. Ramnarain Josh and others, 4 S. W. R. Cr. R. 37.

Held, that the prisoners could not be convicted of abetment of grievous hurt, and of abetment of riot, after having been convicted of both charges as principals. As, however, the evidence credited by the jury was held by the High Court to support a conviction of culpable homicide, and as the prisoners even on their conviction on the lesser charge of grievous hurt, might have been sentenced to a much heavier punishment than had been passed on them, their punishment was not reduced.

Reg. v. Durgessur Surma, 7 S. W. R. Cr. R. 97.

Where A. ordered B. and C. to seize and forcibly take D. in the contemplation of an assault upon D. and D. was so beaten and tortured as to have died in consequence. Held, that A. was guilty at least of abetting the commission of voluntarily causing grievous hurt.

Reg. v. Goluck Chung and others, 5 S. W. R. Cr. R. 75.

The prisoners having abetted an assault, and murder having been committed. Held, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt and not of abetment of murder.

Reg. v. Gopal Prosaud Sen and others, 8 S. W. R. Cr. R. 16.

Under section 94, Act XX of 1866 an abettor may be punished more severely than his principal can be.

Reg. v. Goburdhun Bera, 6 S. W. R. Cr. R. 80.

Prisoner was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. Held, that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under section 201 of the Penal Code.

Reg. v. Hisamuddeen, 3 S. W. R. Cr. R. 37.

Abetment of the issue of a false certificate of summons. Although there was no chowkidar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that, he (an utter stranger in the village) was deceived by the villagers.

Reg. v. Jehan Buksh, 5 S. W. R. Cr. R. 68.

How a Judge should charge the jury in a case of abetment, while present of the forgery of a valuable document.

Persons punished as principals cannot also be punished for abetment of the same offence.

Reg. v. Jeetoo Chowdry, 4 S. W. R. Cr. R. 23.

Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design, with the knowledge that such concealment would facilitate the commission of the dacoity, does not amount to an abetment of the dacoity.

Reg. v. Jhugroo and others 4 S. W. R. Cr. R. 2.

An omission to give information that a crime has been committed does not, under section 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. (See now S. 44 of Act X of 1882.)

Reg. v. Khadim Sheikh, 4 B. L. R. A. Cr. 7.

A Police Magistrate has power to convict summarily under Act IV of 1866 (B. C.) section 26, for an offence punishable under section 116 of the Penal Code.

Reg. v. Mahbut Khan, 1 B. L. R. O. Cr. 39.

In order to bring a prisoner within section 114 of the Penal Code it is necessary first to make out the circumstances which constitute abetment, so that "if absent" he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.

Reg. v. Mussamut Niruni and Monirooodeen, 7 S. W. R. Cr. R. 49.

A former trial set aside on the ground of want of jurisdiction and illegality, is not a bar to a second trial. The conviction of a police inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *malâ fide*.

Reg. v. Muthoora Pershad Panday, 2 S. W. R. Cr. R. 10.

Section 114 and not section 149 of the Penal Code was held to apply to a case where, upon a charge of mischief by fire, the prisoner admitted that he was an abettor and that he was present at the time the offence was committed.

Reg. v. Peer Mahomed, 17 S. W. R. Cr. R. 52.

Where, of several persons constituting an unlawful assembly, some only are armed with sticks and A. one of them, is not so armed, but picks up a stick and uses it, B. (the master of A.) who gave a general order to beat, is guilty of abetting the assault made by A.

Reg. v. Rasookoollah and others, 12 S. W. R. Cr. R. 51.

A person can be convicted of abetment of theft under the 1st Explanation of section 107 of the Indian Penal Code, only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient.

Reg. v. Shumeeruddeen, 2 S. W. R. Cr. R. 40.

Reg. v. Sookmoy Ghose, 10 S. W. R. Cr. R. 23.

Where a prisoner, who appealed to the Commissioner from an order of an Assessor under Act XXI of 1867, filed stamped paper for a copy of the Assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within section 463 and clause I, section 464 of the Penal Code.

Reg. v. Gorachand Gopee and others, 5 S. W. R. Cr. R. 45.

The Hon'ble the Chief Justice: ..... In the present case, the attention of the Judge should, I think, be called to another error which he committed. He says the prisoners who were present, assisting in taking away to murder, and assisting by their *presence in the beating of him*, whether the commission of culpable homicide, &c. It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordee was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was; all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

Reg. v. Eshan Meah and others, 12 S. W. R. Cr. R. 52.

Held, that where A. gave a daô to B. who had given out his intention to co-erce the party against whom he was acting, and who inflicted grievous hurt on such party with the daô, A. was guilty of abetment within the second head of the 3rd clause of section 107 of the Penal Code.

Tarinee Prosaud Banerjee & another, petitioners, 18 S. W. R. Cr. R. 8.

The carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code. The objection that the Sessions Judge was not justified in amending the charge after the case had been decided, but that he should have, if he thought a further charge necessary, directed a new trial, was overruled as coming clearly within the purview of section 426, Code of Criminal Procedure (Act XXV of 1861), there being no contention that the accused had been in any way prejudiced, or that the punishment awarded for the theft by the Joint Magistrate was more than could have been awarded for abetment of that offence.

Reg. v. Nimchand Mookerjee & another, 20 S. W. R. Cr. R. 41.

In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transactions which are criminal.

There can be no offence of the abetment of giving false evidence unless the person charged with abetment intended not only that the statement should be made, but intended that the statement should be made falsely.

Reg. v. Imamdi Bhooyah, 21 S. W. R. Cr. R. 8.

The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act whch is actually done by the person whom he abets.

Reg. v. Ramnath Surma Biswas, 21 S. W. R. Cr. R. 9.

Where the accused was charged under section 116, Penal Code, with having abetted the commission of an offence punishable under section 161 of that Code, the person abetted having been a Civil Surgeon of a sudder station, it was held that the enhanced punishment prescribed by the latter part of section 116 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section, "whose duty it is to prevent the commission of such offence."

Reg. v. Kalichurn Gangooly, 21 S. W. R. Cr. R. 11.

Where a head constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment under the words of section 107 of the Penal Code, Explanation 2.

Reg v. Gobind Dobey, & others, 21 S. W. R. Cr. R. 35.

Under Explanation 5, section 108 of the Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Khajah Noorul Hossein alias Khajah Waheed Jan v. Mr. C. Fabre Tonnerre, 24 S. W. R. Cr. R. 26.

To prove abetment under section 107, Indian Penal Code, by "illegal omission," it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference.

Reg. v. Ram Panda & another, 9 B. L. R. App. 16.

A person cannot be convicted of abetment of a false charge, solely on the ground of his having given evidence in support of such charge.

Empress v. Sita Ram Rai, 3 I. L. R. All. 181.

It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.

Empress v. Abdool Kurreem, 4 I. L. R. Calc. 10, S. C. 3 C. L. R. 81.

A Mahomedan guardian of a married female infant, who, while her husband is living, causes a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under sections 109 and 494 of the Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned.

Empress v. Troylukhonath Chowdhry & others, 4 I. L. R. Calc. 366.

It is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed.

Gopalchunder Sirdar v. Foolmoni Bewah, 8 I. L. R. Calc. 728.

The mere fact that the offence of extortion under section 384 of the Penal Code is committed in the presence of the village chowkidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.

Reg. v. Samia Kaundan, 1 I. L. R. Mad. 173.

Accused was convicted by the Magistrate of abetting the kidnapping of a minor. Accused knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. Held by the High Court, that so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that in the present case the conviction should be of an offence punishable under section 363 and 116 of the Penal Code.

Lingam Ramanna & others, Appellants, 2 I. L. R. Mad. 137.

The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime; but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it.

Reg. v. Padala Venkatasami & another, 3 I. L. R. Mad. 4.

To prepare in conjunction with others a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document do not constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence.

Reg. v. Maruti Dádá & others, 1 I. L. R. Bom. 15.

The offence of abetment under the Indian Penal Code, is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.

WEST, J. ..... "The offence of abetment under the Indian Penal Code is a substantive offence. Its punishment, when the culprit has been present at the commission of the principal offence, is the same as for that offence; and, the trial of it is not, in any way, dependent on the conviction of the person charged with the principal offence. By the Indian as well as the recent English procedure, an abettor may be convicted before the principal is arrested. The principal may then be tried and acquitted, but in this case the abettor has not suffered any wrong. A rational doubt may arise as to the identity or guilt of the principal through the legal exclusion as to him of particular portions of the evidence, and yet there may be no possible doubt as to the guilt of the abettor, in whose case the rules of exclusion do not happen to operate. It would be a perversion of the rules of evidence if because the operation of a rule is to exclude evidence against a principal A., it should operate to the acquittal of an abettor B. who may have fully confessed, as Malhár did in this case, and may, without doubt be guilty. The mere circumstance that B. is tried along with A. instead of at a different trial, cannot alter the real force of the case against him.

Andi Chetty, prisoner, 2 Mad. Rep. 438.

The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. Held, that this was abetment of giving false evidence in a stage of a judicial proceeding and was triable before a Court of Session only.

Proceedings of 8th March 1869. 4 Mad. Rep. Rul. 37.

According to section 114 of the Penal Code, if the nature of the act constitutes abetment, the abettor if present, is to be deemed to have committed the offence though in point of fact another actually committed it.

Reg. v. Chima, 8 Bom. Rep. Crown Cases, 164.

When a person abets the commission of an offence and is present at the time when it is committed, he should be tried, under section 114 of the Indian Penal Code, for the same offence as the principal.

Reg. v. Pestanji Dinsha & another, 10 Bom. Rep. 75.

Whether abetment to murder by sorcery or other impossible means is an offence under the Penal Code. Quere.—

Reg. v. Pirtai, 10 Bom. Rep. 356.

Where a foreign subject, resident in foreign territory, instigated the commission of an offence which, in consequence, was committed in British territory:—Held, that the instigation not having taken place in any district created by the Code of Criminal Procedure (Act X of 1872), the instigator was not amenable to the jurisdiction of a British Court established under that Code, section 66.

Reg. v. Amrita Govinda, 10 Bom. Rep. 497.

If an abettor of a crime is, on account of his presence at its commission, to be charged under section 114 of the Indian Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment.

Reg. v. Brij Mohan Lal, 7 N. W. P. Rep. All. 134.

S. was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D. made and read false abstracts whereby an incorrect record was prepared. The Court was of opinion that D. could not strictly be held to have committed the offence described in section 218 of the Indian Penal Code. He was guilty, however of abetment of the offence described in that section, and not the less so that S. had no guilty knowledge or intention in the matter.

Government v. Gopaul Singh & others, 1 N. W. P. Rep. (Agra) 21.

Held that the prisoners having abetted the suicide were rightly convicted by the Judge for that offence, the sentence was mitigated under the circumstances.

Jugut Mohun Dassee & Madhu Sudhan Dutt in re 10 C. L. R. 4.

There being no abetment of an offence after it has been committed, a person cannot be convicted of abetting the offence of instituting a false charge, on evidence which shows only that he gave evidence in support of a charge found to be false.

Duty of Judge in charging a jury discussed.

Gopal Chunder Sirdar in re 11, C L R. 223.

A. having been found guilty of extortion in having taken Rs. 15 from a woman by threatening to bring a charge of theft against her, the petitioner, who was the village chowkidar, was found to have stood by during the occurrence and, not to have disapproved of A.'s con-

duct, and was convicted of abetment of extortion by the Deputy Magistrate. Held, that there had been no illegal omission on the part of the petitioner, and therefore the conviction was bad.

ASSAULT.

Reg v. Jadoo Paharee, 1 S. W. R. Cr R. 25.

A charge of assault and theft should not be dismissed for default of complainant's attendance.

Reg v. Zalim Rai, & others, 1 S. W. R. Cr. R. 33.

An unpremeditated assault ending in an affray in which death is caused, committed in the heat of passion upon a sudden quarrel, (it being immaterial which party offered the provocation or committed the first assault) was held to come within Exception 4 of section 300 of the Penal Code.

Jehan Buksh & another petitioners, 16 S. W. R. Cr. R. 42.

In a case of assault, a sentence inflicting a fine of 50 rupees and awarding imprisonment for one month in default of payment of the fine is illegal, with reference to sections 65 and 352 of the Penal Code.

Govt. of Bengal v. Sheo Gholam lalla, 24 S. W. R. Cr. R. 67.

The pain caused by a blow across the chest with an umbrella, was held to be not of such a trivial character as to come within the meaning of the Code, section 95.

ATTEMPT TO COMMIT OFFENCES.

Reg. v. Doyal Bawri, 3 B. L. R. A. Cr. 55.

Held, by Glover, J. that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag, with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his *dhoti*, which contained burning charcoal, he is under section 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. Held by Mitter, J. that the possession of a fire ball and moving about with it cannot support a conviction under sections 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling.

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To constitute an offence under section 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it.

Empress v. Riasat Ali, 7 I. L. R. Calc. 352; S. C. 8 C. L. R. 572.

A person cannot be convicted of an attempt to commit an offence under section 511 of the Indian Penal Code, unless the offence would have been committed if the attempt charged had succeeded. A prisoner who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document; and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under sections 465 and 511 of the Penal Code for attempting to commit forgery. Held that the conviction was wrong, and must be set aside.—Garth, C. J.....
"Referring then again to the finding of the jury, the question in this case seems to be, whether what the prisoner did, amounted to preparation only, or to an actual attempt to commit the offence. In the case of Reg. *v.* Cheeseman (Lee and Caves, Rep. 145) Lord Blackburn thus defines an attempt to commit a crime. He says:—"There is no doubt "a difference between the preparation antecedent to an offence and "the actual attempt; but if the actual transaction has commenced, "which would have ended in the crime if not interrupted, there is clearly "an attempt to commit the crime:" and in McPherson's case (2 Dears and B., 202) Cockburn, C. J., says:—"The word attempt clearly con-"veys with it the idea, that if the attempt had succeeded, the offence "charged would have been committed. An attempt must be to do that "which, if successful, would amount to the felony charged." It seems to me, that this definition of an attempt to commit an offence is a sound one, and applying it to the present case, the question is, whether what the prisoner did—amounted to an attempt to make a false document. I have already said,—that in my opinion, the printed form was not in itself a false document, or part of a document (according to the definition in section 464) until the seal or signature of the Bengal Coal Company had been forged upon it, so as to make it appear that such seal or signature was that of the Bengal Coal Company. The prisoner, therefore, would not be guilty of the offence of forgery until the printed form had thus been converted into a false document; and for the same reason, I think that he would not be guilty of an attempt to commit forgery until he had done some act towards making one of the forms a false document. If, for instance, he had been caught in the act of writing the name of the Company upon the printed form; and had only completed a single letter of the name, I think that he would have been guilty of the offence charged, because (to use the words of Lord Blackburn) "the actual transaction would have commenced, which

"would have ended in the crime of forgery, if not interrupted." But as it was, all that he did consisted in mere preparation for the commission of the crime. He was no more guilty of an attempt to commit forgery in having the forms printed, than he would have been of an attempt to commit burglary by having a false key made of the house where he intended to commit the offence." Conviction set aside.

Reg. v. Ramsarun Chowbey, 4 N. W. P. Rep. All. 46.

To constitute the offence of attempt under section 511, Indian Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of section 511, Indian Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.

Reg. v. Cassidy, 4 Bom. Rep. Crown Cases, 17.

In order to constitute the offence of attempt to murder under section 307 of the Indian Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under section 511 taken in connection with sections 299 and 300.

Therefore, where the prisoner presented any uncapped gun at E. G. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger:—Held, that he could not be convicted of an attempt to murder, upon a charge framed under section 307 of the Indian Penal Code; but that, under the same circumstances, he might be convicted, upon a charge of simple attempt to murder framed under section 511 in connection with sections 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law, with reference to attempts, as laid down in Reg. *v.* Collins and the provisions of the Indian Penal Code explained. Couch, C. J. (after stating the questions that had been put to the jury, and their answers to them, proceeded) "Upon these findings I am of opinion that a verdict of guilty ought to be entered upon the 3rd head of charge.

The first two heads are framed under section 307. The words of that section are:—"Whoever does any act with such intention or knowledge and *under such circumstances*, that if he by that act caused death he would be guilty of murder, shall be punished," &c. now it appears to me, looking at the terms of this section, as well as at the illustrations to it, that it is necessary, in order to constitute an offence under it, that there must be an act done under such circumstances that death might be caused if the act took effect. The act must be capable of causing death in the natural and ordinary course of things; and if the act complained of is not of that description, a prisoner cannot be convicted of an attempt to murder under this section. The illustrations given bear out this view. One is that of a man firing a loaded gun; and another is that of a man placing food mixed with poison on another's table. Both these acts are capable of causing death:

but in the present case, although the act was done with the intention of causing death; yet in point of fact it could not have caused death, and it, therefore, does not come within that section .....
"What we have therefore to consider is, whether upon the findings of the jury the prisoner has been guilty of an attempt to murder within section 511 taken in conjunction with sections 299 and 300 of the Penal Code. The words of section 511 are: Whoever attempts to commit an offence punishable by this Code * * * and in such attempt does any act towards the commission of the offence, shall be punished." Now the jury have found that the prisoner presented the gun at the Drum Major with intent to murder him. There was, therefore the intent and the belief of the prisoner that the gun was capable of effecting his purpose. And it appears to me that the presenting of the gun, under these circumstances, was an act of such an approximate nature as to bring the prisoner within the words of section 511. The requirements of the section are,—the intent, and an act done towards the commission of the offence. Supposing the gun was capped,—loaded in the strict sense of the term—no one could for a moment doubt that presenting it at the Drum-Major with the intention of murdering him would be an act done by the prisoner towards the commission of the offence, bringing him within the terms of section 511. Then the fact of there being no cap upon the nipple does not make any difference under this section, if, there is the intent and belief before referred to, and the absence of knowledge that the gun is uncapped. The illustrations show that the circumstance that it is not possible to complete the offence makes no difference as regards the attempt. They are both cases in which an attempt to commit the offence could not have been successful. Looking, therefore, at the words of section 511 and the illustrations to it, I am of opinion that the prisoner may properly, upon the findings of the jury, be convicted of an attempt to murder; and that a verdict of guilty should be entered upon the 3rd head of charge."

BRIBERY.

Reg. v. Bawool Chunder Biswas, 1 S. W. R. Cr. R. 36.

Case of offering a bribe to a juryman. Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother.

Government v. Chunder Coomar Sein, 5 S. W. R. Cr. R. 4.

A Joint Magistrate, in addition to punishing a police officer with fine under section 161 of the Penal Code for taking a bribe, in his administrative capacity ordered his dismissal. Held that the order of fine and the order of dismissal should not be treated as one sentence beyond the competency of the Joint Magistrate to pass.

Government v. Mahomed Hossein, 5 S. W. R., Cr. R. 49.

When a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.

Reference on letter from Offg. Sessions Judge of Jessore, dated 29th May 1869, 12 S. W. R. Cr. R. 59.

Held, that bribery and other offences punishable under the Indian Penal Code, with imprisonment exceeding six months are not triable under Chapter XV of the Code of Criminal Procedure, and cannot therefore be compromised under section 271 of the latter Code. (Act XXV of 1861.) (See S. 345 of Act X of 1882.)

Reg. v. Kalichurn Serishtadar, 3 S. W. R., Cr. R. 10.

The taking of a gratification by a Serishtadar to influence a Principal Sudder Ameen in his decisions is sufficient for a legal conviction, whether the Serishtadar did or did not influence or try to influence the Principal Sudder Ameen. The latter part of the explanation of section 161 of the Penal Code, expressly mentions that "a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for what he has not done" is equally liable.

Reg. v. Obhoychurn Chuckerbutty, 3 S. W. R. Cr. R. 19.

The evidence of the person who bribes is admissible against the person bribed. A person who accepts for himself or for some other person a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under section 161, but under section 162 of the Penal Code.

Reg. v. Ramkrishna Das, 7 B. L. R. 446; S. C. 16 S. W. R. Cr. R. 27.

A peon of the Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special Sub-Registrar, when he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. Held that the peon was a public servant under the definition in the 9th clause of section 21 of the Penal Code, and the trial of the charge against him must be proceeded with.

Reg. v. Setul Chunder Bagchee 3 S. W. R. Cr. R. 69.

A conviction on a charge of attempting to obtain a gratification as a reward for influencing a public servant in the exercise of his public functions is illegal, as disclosing no legal offence, when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions.

Omrit Ram v. Nonao Ram & others, 6 S. W R. Cr R. 90.

A Subordinate Magistrate of the second class is not competent to initiate a charge under section 213 of the Penal Code, of accepting an illegal gratification to screen an offender. Persons not formally charged or put on their defence cannot be legally convicted.

Muttylall Chuttopadhya & another petitioners, 16 S. W. R Cr R 64

On a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. Although no appeal lay in such a case, yet the High Court upon a reference, having power to interfere, quashed the conviction.

Empress v. Kampta Prasad, 1 I. L. R. All. 530.

K. a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the Police and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in section 161 of the Indian Penal Code, but as "dasturi." Held that K. was not, under these circumstances, punishable under section 161 of the Indian Penal Code, but under section 165 of that Code.

Empress v. Baldeo Sahai, 2 I. L. R. All. 253.

To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as in explicit terms. Where therefore B. who was employed as a clerk in the Pension Department, in an interview with A. who was an applicant for a pension, after referring to his own influence in that department and instancing two cases in which by that influence increased pensions had been obtained, proceeded to intimate that anything might be effected by "Kar-rawai" and on the overture being rejected, concluded by declaring that A. would rue and repent the rejection of it, held that the offence of attempting to obtain a bribe was consummated.

Reg. v. Mudsooddeen, 2 N. W. P. Rep. (All) 148.

A putwaree taking grain as a consideration for showing favour to the giver in the discharge of his functions as putwaree, should be convicted under section 161, and not section 165 of the Indian Penal Code.

CHEATING.

Empress v. A. M. Bretton & others. Not reported.

The prisoners in this case were tried at the September Sessions of the High Court, Calcutta, in 1881 and convicted of cheating and abetment thereof. A petition was presented to the Advocate General under section 26 of the Letters Patent of 1865 praying that he would certify that certain points of law set out in the petition ought to be considered further by the High Court. The Advocate General accordingly gave a certificate, and the points were argued before the Appellate Court.

The following Judgment of the Appellate Court was delivered by Wilson, J. In this case the prisoners, Chas. de Bretton and E. C. Ball

have been convicted of cheating, punishable under section 418 of the Indian Penal Code; and the prisoner A. M. Bretton has been convicted of abetting this substantive offence of cheating. The case was tried at the September Sessions of the High Court, and the prisoners were each sentenced to one year's rigorous imprisonment, which sentence they are now undergoing.

The facts are briefly as follows:

The three prisoners are alleged to have been trading in the Mofussil as a partnership under the style of Messrs. Chas. Dutton and Co., and we must take it that the jury found this allegation to be true.—The business carried on by them included the purchase of hides at some forty stations in different parts of Bengal, the North Western Provinces, and the Punjab. In purchasing these hides they acted as the agents of a Calcutta firm, Messrs. Schroder, Smidt and Co., who received and exported the hides purchased on their behalf by Chas. Dutton and Co. In order to enable the firm of Messrs. Chas. Dutton and Co. to carry on their operations Messrs. Schroder, Smidt and Co. advanced considerable sums of money to them from time to time and Messrs. Dutton and Co. had generally in their hands a considerable amount, in some instances as much as two lakhs of rupees for which they were bound to account to their principals, Messrs. Schroder, Smidt and Co.

According to the terms of a written agreement between the parties, business was conducted in the following manner. When a despatch of hides was made from any station, a separate invoice for such despatch was sent to Messrs. Schroder, Smidt and Co. not from the station from which the hides were so despatched but from the head office of Messrs. Chas. Dutton and Co. at Agra.—These invoices supplied Messrs. Schroder, Smidt and Co. with information as to the cost of each consignment of hides. In addition to these invoices, Messrs. Dutton and Co. transmitted monthly accounts which included the amounts shown in the separate invoices, the cost of establishments and other items which, under the agreement were debitable to Messrs. Schroder, Smidt and Co. Messrs Chas. Dutton and Co. were allowed as their remuneration a commission of two and a half per cent. on all purchases.

On receipt of the invoices and subsequent monthly accounts current, Messrs. Schroder, Smidt and Co. gave Messrs. Dutton and Co. credit for the amounts shown therein when checked and found correct.

The offence of cheating was charged in respect of three consignments, this being the largest number of offences of the same class for which the prisoners could be tried at a single trial.

The first of these three consignments was made in January 1880 from Dinapore and the cheating is said to have consisted in this, that whereas these hides cost only Rs. 4,192-7-8 as shewn by the actual accounts of the purchasers at Dinapore, the prisoners (as constituting the firm of Messrs. Dutton and Co.) charged Rs. 294-8-3 more than the actual price in the invoice, and on the subsequent account current; and in consequence of being deceived by these false documents Messrs. Schroder, Smidt and Co. allowed them credit for the excess so fraudulently charged. The invoice and account current connected with this first consignment were signed by the prisoner Ball.

The second and third consignments were also made from Dinapore in January 1881, and the offence of cheating was alleged to have been committed in a similar way upon these in respect of Rs. 398-0-10 and Rs. 999-1-2 respectively. The invoices and accounts current connected with these two consignments were signed by the prisoner Chas. de Bretton. The jury were directed that the only abetment possible in the case was abetment by conspiracy. They found Ball guilty of the substantive offence of cheating in respect of the first of the above-mentioned three consignments, and of abetting a similar offence in respect of the two remaining consignments. They found Chas. de Bretton guilty of the substantive offence in respect of the second and third consignments, and guilty of abetment in respect of the first consignment, and finally they found A. M. Bretton guilty of abetment in respect of all three consignments.

A petition has since been presented to the Advocate General under section 26 of the Letters Patent of 1865, praying that he would certify that certain points of law set out in the petition, ought to be considered further by this Court, and the Advocate General accordingly certified that in his opinion the following points should be so considered :—

(7.) That the cheating sections of the Indian Penal Code are not intended to apply to transactions purely commercial.

(8.) That the indictment against the petitioners cannot lie on the ground that the funds in the hands of an agent are not the principal's "property" within the meaning of the law.

(9.) That it ought to be held on a proper construction of the definition of cheating in the Indian Penal Code that the latter part of the section is not applicable to the state of facts disclosed by the case for the prosecution.

(11.) That there was no evidence adduced on behalf of the prosecution which made out a case againt the petitioners to go to the jury.

(18.) That the subject matter of the complaint against the petitioners is such as not to form a fit subject for enquiry and trial in a Criminal Court.

(20.) That there was no evidence of abetment adduced against the petitioner A. M. Bretton.

(A.) That the learned Judge misdirected the jury by saying :—"The direction I will give you is this : if you are satisfied that, in the course of business, these invoices were sent into the house of business belonging to Schroder, Smidt and Co. and, in the ordinary course of business there, they were received, checked and entered in their books, and the effect was to give Dutton and Co. credit for a sum of money which they would retain on that settlement of accounts, then the evidence would be sufficient to support this charge."

(B.) That the learned Judge has misdirected the jury on the question of conspiracy as regards A. M. Bretton.

(O.) That the jury has been misdirected as to the right of Schroder, Smidt and Co. to call for accounts direct from Bevis at Dinapore.

(O1.) That the learned Judge misdirected the jury by saying: "If you believe these higher charges were, as I have said before, made fraudulently and dishonestly with the intention that Chas. Dutton and Co. might retain any sums to which they were not lawfully entitled, and Schroder, Smidt and Co. should lose those sums to which they were lawfully entitled, the only conclusion at which you can arrive is, that in respect of these three items the offences were committed."

The points thus certified by the Advocate General raised a few questions only in different forms, which have now been argued before us by the prisoner's Counsel.

The first point was, that there was no evidence of abetment adduced against the prisoner A. M. Bretton, which ought to have been left to the jury.

For the purposes of this question, we must assume that the offence of cheating by means of the false invoices had been brought home to the other two prisoners. Then the first step taken by the prosecution to prove that the prisoner A. M. Bretton was guilty of abetting that offence was to show that he, as well as the other prisoners, were partners in the firm of Dutton and Co., and it was hardly denied that there was evidence before the jury which if believed, was sufficient to prove that partnership:—This, of course, was an important step in the evidence because it established the connection between the three prisoners, and also the fact that they would all participate in the gain which resulted from the act of cheating.

Then it was also proved that, on the 6th of April 1881, the prisoner A. M. Bretton went with Ball to Mr. Bevis, the agent of Dutton and Co. at Dinapore and told him that if Mr. Smidt should ask to see his (Bevis's) accounts, he was not to show them; and they further instructed him to say that those accounts were, for the most part, not writtten in English but in Persian. This last instruction was undoubtedly a falsehood. The accounts which passed between Bevis and his sub-agents in the Mofussil might have been in Persian; but the accounts of Dutton and Co. which Bevis kept, and which it was expected that Mr. Smidt would wish to see, were kept entirely in English. Then again, it was proved, that, on the 8th of the same month, A. M. Bretton sent a telegram to Bevis, informing him as the fact was, that Mr. Smidt was proceeding to Dinapore and cautioning him to be careful.

There were also another telegram, and two letters, which were all left, and, we think, properly left to the jury, as evidence which they might take into consideration as against A. M. Bretton.

Now seeing that A. M. Bretton was found to be a member of the firm of Dutton and Co. and one of the persons who would profit by the fraud, which was proved against the others, that such fraud was committed in the ordinary course of the firm's dealings with Schroder, Smidt and Co. we think it impossible to say that looking to the other parts proved, there was no evidence to go to the jury that A. M. Bretton was a consenting party to, and therefore abetted the offence of cheating.

It has been suggested that his conduct was consistent with his having become acquainted with the fraud of his partners only after it had been

committed, and that all that he did might have been for the purpose of screening them from discovery. But this was surely a question for the jury. It was for them to say whether the conduct of A M. Bretton satisfied them that he was guilty of abetment, or was only referable to some other supposition which would have been consistent with his innocence. The jury have found that question against him and we see no good reason for disturbing their verdict.

The next point taken, applies to the case of all the prisoners, namely, that the facts as proved by the prosecution did not constitute an offence within the meaning of section 415 of the Indian Penal Code. It was argued, that the case did not come within the 1st clause of the section, because Schroder, Smidt and Co. were not induced by the deception to consent that Dutton and Co. should retain any property of theirs; and as regards the latter clause of the section that Schroder, Smidt and Co. were not induced by the deception to do any act, which they would not otherwise have done, and which was likely to cause damage to them in respect of their property.

And as regards the whole section, it was further argued that it was necessary in order to the commission of the offence that the person consenting to the retention of the property under the 1st clause, or the person damaged or likely to be damaged under the 2nd clause, must be the person on whom the deception was practised and who was himself deceived.

It was said that Mr. Von Sparenborg who received the invoices and was in the employ of Schroder, Smidt and Co. was the only person really deceived by those invoices, whilst on the other hand it was the firm of Schroder, Smidt and Co. who placed the money to the credit of Dutton and Co. and who were likely to suffer damage if any by that act. We think, however, that even if the case does not fall within the 1st clause of section 415, it comes clearly within the last, and that the charge against the prisoners is so framed as to describe the offence under both clauses. We consider that Schroder, Smidt and Co. were induced by the deception practised upon Mr. Von Sparenborg to do that which they otherwise would not have done, namely, to give credit to Dutton and Co. for the amount of the invoice prices; and that they were likely in consequence to suffer damage to their property. It was argued on behalf of the prisoners that sooner or later there must have been a final settlement of accounts between the two firms, and that therefore Messrs. Schroder, Smidt and Co. could run no real risk of losing their money, and that they were placed in no worse position in respect of that money by giving the Duttons in their books a temporary credit for more than was their due. This appears to us to be a view of the matter which it is impossible reasonably to accept. Each month's transactions as we have already seen were settled between the two firms by accounts which were regularly sent and adjusted, and unless some fortunate chance had enabled Messrs. Schroder, Smidt and Co. at some future time to detect the fraud that had been practised upon them, the Duttons would in the ordinary course have appropriated the money for which they obtained credit, and there is no reason to suppose that Schroder, Smidt and Co. would ever have had an opportunity of recovering it. As regards the last point which was argued under section 415, it appears to us that the decep-

tion practised upon Sparenborg by means of the false invoices was to all intents and purposes practised upon Schroder, Smidt and Co., the mis-statements in the invoices was not made or intended to be made to Sparenborg in his personal capacity, but as acting for the firm of Schroder, Smidt and Co. The mis-statement was to the firm; it was made in the course of dealings with the firm; and it was intended to deceive and did in fact deceive the firm in the person of Sparenborg.

If Mr. Bannerjee's contention were correct, the operation of section 415 would (amongst commercial men at least) be confined to those very few cases where a trade or business is carried on entirely by one person. It would be wholly inoperative in the case of firms or Companies or Corporations whose business is divided into several departments or is transacted by a number of clerks or servants.

Take for instance the case of the Bank of Bengal. A person intending to commit a fraud upon the Bank, makes a false representation to one of its officers in consequence of which he fraudulently obtains from another officer in the Bank a sum of money; and the Bank itself suffers a loss to the amount of the sum so paid. Now here the deception is practised upon one person, the money is paid by another and the loss is sustained by a third. According to Mr. Bannerjee's argument it would be impossible to convict the offender under section 415. It would be impossible, in fact to convict any body under that section unless the party who is deceived and the party who suffers or is likely to suffer loss is one and the same person.

We think it impossible to suppose that this was the intention of the legislature; aud we see no reason why a deception practised upon a firm or Company through the medium of one of the persons in their employ should not be within the scope of the section.

Then another point which was relied upon at the trial and strongly pressed upon us by Mr. Gasper, was that from time to time certain price lists were sent to Calcutta showing generally the rate at which hides were selling in the different districts, and it is said that the lists which were forwarded to Calcutta at the times when the invoices in question were sent shewed that the rates at Dinapore were less than those charged in the invoices; so that Mr. Sparenborg must have known that the prices mentioned in the invoices were not intended to be the real prices paid by Dutton and Co., but only prices which taken with the other invoices which were sent in from other agencies would average a certain price; and Mr. Gasper contended that according to this course of business between the two firms, the invoices were not intended to, and did not in fact, represent the prices actually paid. We think, however, that this point was dealt with very properly by the learned Judge at the trial. *Primâ facie*, the prices named in the invoices meant what they purported to represent, namely, the sums actually paid for the goods invoiced and Mr. Sparenborg states distinctly in his evidence that he considers them to represent the prices so paid. If the prisoners desired to show that this was not true, and that according to the course of business the invoices were intended to mean and did mean something different from this, they should have proved it. There were surely clerks and others employed at Agra and Cawnpore who were in the

habit of making out these invoices and who could easily have been called to show how they were made out and upon what principle.

No evidence whatever was given upon this point but it was very fully discussed and argued at the trial by the prisoners' Counsel, and it is evident that the jury by their verdict refused to accept the explanation.

The only remaining points have reference to certain alleged mis-directions by the learned Judge at the trial. He is said in the first place to have mis-directed the jury by saying "the direction I will give to you is this: if you are satisfied that in the course of business these invoices were sent into the house of business belonging to Schroder, Smidt and Co. and in the ordinary course of business there they were received, checked and entered in their books, and the effect was to give Dutton and Co. credit for a sum of money which they would retain on that Settlement of accounts, then the evidence would be sufficient to support the charge."

It is said that this was a mis-direction because the Judge took upon himself to tell the jury that if the facts which he mentioned in that sentence were found by them, then the evidence was sufficient to prove the entire charge against the prisoners, in fact that the Judge took upon himself to decide a question which it was for the jury to determine. But upon looking to the report of the summing up, we find that this direction to the jury was only addressed to them with reference to one part of the case, namely, the last point which we have now decided under section 415. The learned Judge merely meant to say that according to his view of section 415, if the jury found certain facts to be established, there would then be sufficient evidence to convict the prisoners of cheating under section 415, another alleged mis-direction (under heading B) on the part of the learned Judge, was as to the charge of conspiracy against the prisoner A. M. Bretton, the only reason why it became necessary to deal with the question of conspiracy at all was with a view to show that A. M. Bretton was guilty of abetment as defined by the Penal Code.

The second definition of abetment under section 107 of the Code is this, "a person who engages with one or more other persons in any conspiracy for the doing of a thing, if any act or illegal omission takes place in pursuance of that conspiracy." Now in order to show, therefore, that A. M. Bretton abetted the offence of cheating committed by the other prisoners, it was necessary to prove that he conspired with the other prisoners to commit that offence, and the learned Judge is said to have mis-directed the jury in telling them that they were at liberty to take into consideration, acts done or statements made by the other prisoners for the purpose of proving the conspiracy. What the learned Judge said upon this subject was, that the remarks which he made were on the law of conspiracy in the abstract, and there is no doubt that what he laid down as the general rule upon this subject was perfectly correct, and having considered his summing up, we find nothing which could in any way have misled the jury as to the evidence which they were at liberty to take into consideration as against the prisoner A. M. Bretton. It is clear that for the purpose of proving the abetment, it was necessary in the first instance to show that the offence of cheating had been committed by one

or both of the other prisoners. Then we find that the learned Judge very carefully dissected the evidence against each of the prisoners, and particularly explained to them the several acts which had been proved against the prisoner A. M. Bretton, tending to shew that he had been a consenting party to the perpetration of the offence. There was ample evidence we think upon which the jury might have found that the offence was committed by the common consent of the three prisoners, or in other words that they had conspired to commit it, and we see nothing in the summing up of the learned Judge, of which any of the prisoners have a right to complain, or which was calculated to mislead the jury in any way. Without thinking it necessary therefore, to call upon the Counsel for the Crown, we consider that the conviction and sentence should be affirmed."

Reg v. Kenrick, 5 Queen's Bench raports 49.

A false pretence knowingly made to obtain money is indictable though the money be obtained by means of a contract which the prosecutor was induced by the falsehood to make.

LORD DENMAN, C. J. .. ..

" A general question seems here to be raised, whether if money be obtained through the medium of a contract between the defendant and the party defrauded the charge of false pretence can be sustained. Questions approaching this have been raised in the criminal courts. With some plausibility the thing obtained through the false pretence may be said to be the contract and not the money which is paid in fulfilment of it, and which the party is probably by its terms liable to repay. This was the ground on which my brother *Littledale* directed an acquittal in Reg. *v.* Codrington (1 C. and P. 661.) But that decision was lately much doubted by the Judges with reference to a case reserved by the Recorder of London. A person who falsely pretended that he was an Emigration Commissioner thereby induced the prosecutor to enter into a contract with him, and to pay him under it a sum of money. An objection was taken that the verbal representations could not be received in evidence, as the bargain between them was reduced to writing. But the Recorder admitted the evidence; and the Judges unanimously approved of his decision; and the conviction was held good. Hence it follows that the execution of a contract between the same parties does not secure from punishment the obtaining of money under false pretences in conformity with that contract. Generally speaking indeed, there would be little satisfaction in suing parties guilty of such a proceeding. But in the greater number of such cases, it is more probable that a contract should intervene in the transaction than otherwise Though many breaches of contract may be of such a nature as to be the subject of an action and not of any criminal proceeding, it is clear that the liability to an action cannot of itself furnish any answer to an indictment for fraud."

Reg. v. Meakin, 11 Cox's Criml. Cases, 270.

On the trial of an indictment against the prisoner for pretending that his goods were unencumbered, and obtaining thereby £8 from the prosecutor with intent to defraud, it appeared that the prosecutor lent money to the prisoner at interest, on the security of a bill of sale on fur-

niture, a promissory note of prisoner and another person, and a declaration made by prisoner that the furniture was unencumbered. The declaration was untrue at the time it was handed to the prosecutor, the prisoner having a few hours before given a bill of sale for the furniture to another person but not to its full value. Held, that there was evidence to go to the jury in support of a charge of obtaining money by false pretences.

Reg. v. Dabee Sing and others, 7. S. W. R. Cr. R. 55.

Where two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of a much higher caste than they really were, and married to two Rajpoots after receiving the usual bonus. Held, that the prisoners could not be convicted under section 373 of the Penal Code, but of cheating and false personation under sections 415 and 416.

Reg. v. Dayabhoy Parjaram, 1 Bom. Rep. 140.

A passenger by railway, travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under section 417 of the Indian Penal Code, but is indictable under the Railway Act (now Act IV of 1879).

Reg. v. Dhunput Ojah, 7 S. W. R. Cr. R. 51.

Where a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman, Held that he was guilty of cheating by personating under section 416 of the Penal Code, and that it was unnecessary to bring in section 109 relating to abetment.

Reg. v. Heeramun Hulwye, 5 S W. R. Cr. R. 98 S. C. I. Ind. Jur. N. S. 97.

The mere taking money one day and dishonestly running away without paying the next day is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention.

Reg. v. Puddomoneee Boistobee, 5 S. W. R. Cr. R. 98.

Case of cheating a person who was induced to part with his money and to contract marriage with a girl under the false impression that she was a Brahminee. Appeal rejected.

Reg. v. Rajcoomar Banerjee, S. W. R. 1864, Cr. R. 25.

To induce a son to pay his father's debts by acting merely on his fear of consequences to his father, is not cheating. To describe these consequences as more serious than they were likely to be, may be to deceive, but is not cheating if done without any fraudulent or dishonest intention.

Reg v. Ramnarain Chowkedar, 3 S. W. R. Cr. R. 32.

A chowkidar who obtains money from any person either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under section 417 of the Penal Code (Cheating) or sections 383 and 384 (Extortion), but not for criminal misappropriation of public money entrusted to him as a public servant.

Reg. v. Sadanund Dass, 2 S W. R Cr. R. 29.

The prisoner having passed himself off as a police officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant.

Sadoochurn Pal, Petitioner, 4 S. W. R. Cr. R. 13.

Case in which the majority of the Court held that it was one of breach of contract, while Seton-Karr, J. was of opinion that the prisoner was rightly convicted of cheating under sections 415 and 417 of the Penal Code.

Reg. v. Evans, 32 Law Journal, M. C. 38, 1863.

The prisoner and two other persons entered into articles of partnership, by the terms of which the profits were to be divided equally among them. By a subsequent verbal arrangement the prisoner was to act as agent for the sale of the partnership goods, and was to receive a commission on all orders obtained by him, which commission was to be paid out of the partnership funds before any division of profits was made. The prisoner by falsely pretending that he had obtained some orders, got his fellow partners to pay him a sum for commission; Held, that he was not indictable for obtaining money by false pretences, as his charges were payable out of the partnership funds, and his false statement was a misrepresentation respecting a partnership matter and would have to be investigated, and the sum paid duly considered in taking the partnership accounts, in order to ascertain the profits.

Per Pollock, C. B The statute rendering indictable persons who obtain money by false pretences is not intended to apply to those who, by fraudulent and knavish statements, obtain money in the course of a real commercial transaction.

Reg. v. Wavell, 1 Moody's Crown Cases, 224.

Obtaining credit in account from the party's own banker, by drawing a bill on a person on whom the party has no right to draw, and which has no chance of being paid, is not within 7 and 8 G. 4 C. 29 S. 53 though the banker pays money for him in consequence thereof to an extent he would not otherwise have done.

The Judges were of opinion, that the prisoner could not be said to have obtained any specific sum on the bill, all that was obtained was credit in account, and they therefore held the conviction wrong.

Reg. v. Naylor, 1 Vol. Law Reports, Crown Cases Reserved, 1865.

The crime of obtaining goods by false pretences is complete although, at the time when the prisoner made the pretence and obtained the goods he intended to pay for them when it should be in his power to do so.

Reg. v. Francis, 2 Law Reports, Crown, Cases, Reserved May 1874.

On the trial of an Indictment for endeavouring to obtain an advance from a pawn-broker upon a ring by the false pretence that it was a diamond ring, evidence was admitted that two days before the transaction in question the prisoner had obtained an advance from a pawn-broker upon a chain which he represented to

be a gold chain, but which was not so, and endeavoured to obtain from other pawn-brokers advances upon a ring which he represented to be a diamond ring, but which in the opinion of the witnesses, was not so. This ring was not produced. Held, that the evidence was properly admitted.

Reg. v. Mills, 1 Dearsly and Bells, Crown Cases, 205.

The prisoner was convicted on an indictment for obtaining money by false pretences. The indictment alleged that the money was obtained by the prisoner by the false pretence that he had cut 63 fans of chaff when in fact he had only cut 45 fans. It appeared by the evidence that the prisoner was employed to cut chaff at two pence per fan, and that on making the false pretence alleged in the indictment he demanded 10*s.* 6*d.* from the prosecutor. The prosecutor had previously seen the prisoner remove 18 fans from an adjoining place and add them to the heap which he pretended he had cut but, notwithstanding this knowledge, he paid the prisoner the amount he demanded. Held that the conviction was wrong, as the money was not obtained by means of the false pretence. Cockburn, C. J.—The test is, what is the motive operating on the mind of the prosecutor which induced him to part with his money? Here the prosecutor knew that the pretence was false, he had the same knowledge of its falseness as the prisoner. It was not the false pretence, therefore, which induced the prosecutor to part with his money; and if it is said that it was parted with from a desire to entrap the prisoner, how can it be said to have been obtained by means of the false pretence. Conviction quashed.

Reg. v. Ady, 7 Carrington and Paynes Reports, 140.

If a party obtain money by a false pretence, knowing it to be false at the time, it is no answer to shew that the party from whom he obtained the money laid a plan to entrap him into the commission of the offence.

The prosecutor a clergyman, accompanied by Mr. Hamond, a Magistrate went and saw the defendant, in consequence of the following letter which had been previously received—April 25th 1834—The undersigned is able to inform you of something to your advantage, value 250£ on payment of 20*s.* by post or otherwise, for his trouble.

Yours respectfully &c.
"JAMES LAURIE, *Accountant,*
11 *Circus, Minories.*

"No letters received unless post paid."

The defendant said that James Laurie was his partner, and was the brother of Sir Peter Laurie, the late Lord Mayor, neither of which was the fact. Mr. Hamond paid the defendant a sovereign, upon which he gave him a paper containing some information, which turned out to be useless.

For the defence, an endeavour was made to shew, by the cross-examination of the witnesses for the prosecution that the prosecutor and his friend went together to the defendant, well knowing who he was, for the purpose of making evidence to support a case against him.

PATTERSON, J. in summing up said .....
It is necessary that you should be satisfied that the defendant obtained

the money under the false pretences mentioned in the indictment. It is not necessary that all the pretences should be false. If you believe that any one of them was false, and that the mind of the prosecutor was operated upon by it, then you will find the defendant guilty. If I understand the defence set up, it is nothing more nor less than this, that a conspiracy existed between the prosecutor, Mr. Tebbutt, the clergyman, and Mr. Hamond, the Magistrate and foreman of the grand jury, to entrap the defendant into the commission of the offence. You will judge for yourselves upon this, whether it be so or not. But still, if the defendant did obtain the money by false pretences, and knew them to be false at the time, it does not signify whether they intended to entrap him or not. The prosecutor said "I was "induced to pay the sovereign, in the belief that I should have received "the money stated in the letter, and that Mr. James Laurie was the person "he was represented by Mr. Ady to be." He said also—"I think I should not have advanced the sovereign, unless I had expected to receive the money, and unless I had believed the statement he made." His Lordships left the case to the jury who found the defendant guilty.

Reg. v. Hazelton, 2 Law Reports, Crown Cases Reserved, Nov. 1874.

The prisoner was indicted for obtaining goods by (amongst others) the false pretence that certain cheques were good and valid orders for the payment of their amount. It was proved that the prisoner ordered goods of the prosecutors, and said he wished to pay ready money for them. He gave cheques on a Bank for the price and took away the goods. The prisoner had shortly before opened an account at the Bank but had drawn out the amount deposited except a few shillings. Various cheques of his had been refused payment and he would not have been permitted to overdraw. He did not intend when he gave the cheques to the prosecutor to meet them but intended to defraud. Held, that there was evidence of the false pretence that the cheques were good and valid orders for the payment of their amounts.

Loothy Bewah and others Case of 11 S. W. R., Cr. R. 24.

Where A. intended to register a deed but was too ill to do so, and B. who was known to A. personated A. and had the deed registered in her name, it was held that in the absence of anything to prove that it was intended to defraud any body, A. was not guilty of cheating by personation under section 419 of the Penal Code, but of an offence under section 93 of the Registration Act XX of 1866. C. and D. who abetted A. were convicted of an offence under section 94 of the said Act XX.

1. Reg. v. Kalee Modock.

2. Tumizooddeen v. Kangalee Gwala 18 S. W. R. Cr. R. 61.

Where the accused were convicted of cheating under section 415 Penal Code—the one of selling watered milk, and the other an inferior sort of sweetmeats,—they were acquitted: the former, because the purchaser knew, and was told the milk was watered, and so there was no deception; and the latter on the ground that the purchaser might have tasted the sweetmeats before buying, and the sweetmeats were not composed of any material injurious to health.

Joy Kurn Singh v. Man Patuck, 21 S. W. R. Cr. R. 41.

A misrepresentation by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by G. L. putwaree, and it was said that it was signed by G. L. but at a time when G. L. was not a putwaree, it was held that the document was not a forgery within section 464 of the Penal Code.

Reg. v. Lal Mahomed & another, 22 S. W. R. Cr. R. 82.

A person who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee) on condition that he should sell it at a seer the rupee less, was convicted of cheating under section 420 of the Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee: Held, that as within the meaning of sections 23 and 24 of the Penal Code, there had been no wrongful loss to any one, nc offence had been committed under section 415 of the Penal Code.

Reg. v. Kalipuddo Paramanick, 23 S. W. R. Cr. R. 43.

A contractor in the Public Works Department who was charged with cheating in respect of a sum of money which he received on account for work which it was alleged he had not then finished, was acquitted on the evidence, because it was not proved (1) that there was a false pretence made use of by accused; (2) that he knew he was making use of a false pretence or that he intended to defraud; (3) that the Public Works Department were deceived by the pretence on account of their belief in its truth; and (4) that the accused received the money with the intention of causing wrongful loss to the Government.

Reg. v. Kadir Bux, 3 N. W. P. Rep. All. 16.

A person hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending when he got the property to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating.

Reg. v. Sheodurshun Dass & another 3 N. W. P. Rep. All. 17.

The prisoners received a Government Promissory note, promising to return certain jewels pledged to them, but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender. Held that they were guilty of cheating.

Reg. v. Willans, 1 Mad. Rep. 31 S. C. Ind. Jur. O. S. Nov. 1862.

An indictment for cheating, under sections 415 and 420 of the Penal Code, should state that the property obtained was the property of the person defrauded; but an indictment defective in this respect is defective for uncertainty and must be objected to, if at all, before the jury is sworn.

Proceedings of 6th Jany. 1871, 6 Mad. Rep. Rul. 12.

The defendant was convicted of cheating. He applied to the Tahsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. Held, a good conviction.

Reg. v. Mehervanji Bejanji, 6 Bom. Rep. Crown Cases, 6.

Where the accused secretly entered an Exhibition building without having purchased a ticket, and was there apprehended: It was held that such act did not amount to cheating, under section 415, of the Penal Code. Such entry, when unaccompanied by any of the intents specified in section 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence.

Reg. v. Hargovandas and Harkissandas, 9 Bom Rep. 448.

Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners and the Court of appeal from such Court did not constitute the offence of cheating of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence.

To justify a conviction for the offence of cheating there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made.

Reg. v. Hensler, English Weekly Rep. Vol. 19, p. 108.

The prisoner wrote a begging letter to the prosecutor, in which by certain false statements, he attempted to obtain money. The prosecutor sent the prisoner five shillings, but stated at the trial that he knew that the pretences were false. Held, that the prisoner might be convicted of an attempt to obtain money by false pretences.

Proceedings of 9th Dec. 1880. Weir, 187.

Obtaining delivery of a valuable security under the inducement of a promise not intended to be kept and with a fraudulent intention, amounts to cheating.

Veeraswami accused. Weir, 188.

The evidence must establish the existence of a fraudulent or dishonest intention at the time of the commission of the act in respect of which the cheating is alleged.

CAUSING DISAPPEARANCE OF EVIDENCE OF AN OFFENCE COMMITTED.

Reg. v. Muddun Mohun Bose & others 7 S. W. R. Cr. R. 22.

A conviction on a charge of causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder may be good, though there be no proof of who committed the culpable homicide.

Empress v. Behala Bibee, 6 I. L. R. Calc. 789; S. C. 8 C. L. R. 207.

A woman who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child, which was missing. She made three different statements; (1) that she had left it with her husband; (2) that she had been enticed away by one R. who had taken the child from her; (3) that one H. had drowned the child. The Sessions Judge believed the last statement, and convicted her under section 201 of the Penal Code. Held, that the conviction

was wrong, and must be set aside. Section 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another.

Empress v. Krishna & another, 2 I. L. R. All. 713.

K. and B. having caused the death of J. in a field belonging to B., removed J.'s dead body from that field to his own field with the intention of screening themselves from punishment. K. was convicted on these facts of an offence under section 201 of the Penal Code. Held, that that section referred to persons other than the actual offenders, and K. could not therefore properly be punished under that section for what he had done to screen himself from punishment. Also that, as a matter of fact, he did not by removing J.'s corpse from one field to another, cause any evidence of J.'s murder which that corpse afforded to disappear, and his act, although his object may have been to divert suspicion from himself and B. did not constitute the offence defined in that section.

Reg. v. Ramsoonder Shootar, 7 S. W. R., Cr. R. 52.

Section 201 of the Penal Code refers to prisoners other than the actual criminals who, by their causing evidence to disappear, assist the principal to escape the consequences of their offences. But the person who commits an offence and afterwards conceals the evidence of it, cannot be punished on both heads of the charge.

Empress v. Abdul Kadir, 3 I. L. R. All. 279.

Held that it is necessary, in order to justify a conviction under section 201 of the Indian Penal Code, that an offence for which some person has been convicted or is criminally responsible should have been committed.

Reg. v. Toolshee Rai and another, 5 N. W. P. Rep. All. 186.

A person cannot be punished under section 201 of the Indian Penal Code, where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender.

Reg. v. Subbramanya Pillai, 3 Mad. Rep. 251.

Prisoner was charged under section 201 of the Penal Code for that he knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false. Held, that the proper order of proof on the part of the prosecution in the present case, was to prove (1) that A. N. was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer. Held, also that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further enquiry directed under section 422, Criminal Procedure Code, (XXV of 1861).

Reg. v. Kashinath Dinkar & others, 8 Bom. Rep. Crown Cases, 126.

Semble. A person cannot be convicted under section 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act (per Lloyd and Kemball, J.J.).

COIN.

Reg. v. Kunj Beharee, 5 N. W. P. Rep. All. 187.

It is not necessary to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law, gold mohurs which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX of 1872.

COMMON PROSTITUTE.

Lakhimani Rar in the case of, 3 B. L. R. Ap. Cr. 70; S. C. 12 S. W. R. Cr. R. 55.

Under Act XIV of 1868 the Police are not empowered to put a woman on the register of "Common Prostitutes" against her will.

The penalty prescribed by section 11, Act XIV of 1868 for disobedience of any of its rules is for a "woman" who voluntarily registers herself as a "common prostitute." A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868, against the legality of her registry, or that she is not a common prostitute.

The possession of a registry ticket is not sufficient evidence of being a common prostitute.

Empress v. Nistar Raur, 6 I. L. R., Calc. 163; S. C. 7 C. L. R 197.

Any woman desirous of ceasing to carry on the business of a common prostitute is, under the provisions of the Indian Contagious Diseases Act 1868, absolutely entitled to have her name removed from the register; and any rule, or portion of a rule, purporting to have been framed under the provisions of that Act which places any obstacle on the way of her doing so, is *ultra vires*, and therefore void. Where a woman is prosecuted before a Magistrate under section 11 of Act XIV of 1868, she is not precluded from pleading that she has ceased to be a common prostitute, and that she has taken steps, under section 21 and the rules framed thereunder, for the removal of her name from the register; and the Magistrate is competent to entertain such a defence. In the matter of Lakhimoni Raur (3 B. L. R. A. Cr. 70) approved.

COMPROMISE.

Nobin Chunder Mudduck, petitioner, 22 S. W. R. Cr R 46.

Where A. entered into an agreement with B. not to compromise a case with C. because he had assigned the benefit of the suit to B. as a security for the due payment of some monthly instalment of money, and A. notwithstanding did afterwards compromise the suit with C., it was held that A. could not be convicted under section 422 of the Penal Code, unless the compromise with C. was made dishonestly or fraudulently towards B.

COMPOUNDABLE OFFENCES.

Raunak Husain v. Harbans Singh, 3 L. R. All. 283.

Cheating and forgery are not offences which may be lawfully compounded. Where a Magistrate decided that certain offences could be lawfully compounded, having regard to a bill which the Legislature had brought in amending section 214 of Act XLV of 1860, held that it was irregular for such Magistrate to allow his decision to be guided by anything in a bill that had not become law, and it was his duty to have interpreted that section without reference to merely contemplated legislation.

Reg. v. Madan Mohan, 6 N. W. P. Rep. All. 302.

The offence of assaulting a man and intentionally causing grievous hurt does not consist of an act irrespective of the intention, and cannot be compounded. The term "assault" used in illustration (*b*) to section 214 of Act XLV of 1860 does not mean assault as defined in the Code. It is to be construed in its general and more ordinary sense.

Reg. v. Rahimat, 1 I. L. R. Bom. 147.

Whenever the words "voluntarily", "intentionally", "fraudulently", "dishonestly", or others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one irrespective of the intention, is not one which the exception to section 214 of the Indian Penal Code by itself allows to be compounded. The offence, to admit of compromise, must be one, in this sense irrespective of intention, and it must be one for which a civil action may be brought at the option of the person injured, instead of criminal proceedings. The offence of voluntarily causing grievous hurt cannot be compounded. Reg. *v.* Jetha Bhala (10 Bom. H. C. Rep. 68) disapproved.

Note.—As to what cases are now compoundable, see section 345 of the Criminal Procedure Code (Act X. of 1882).

Reg. v. Jetha Bhala, 10 Bom. Rep. 68.

The offence of voluntarily causing hurt under section 323 of the Indian Penal Code, is one which may lawfully be compounded, and the withdrawal from the prosecution, in such a case is, therefore, permissible under section 188 of the Code of Criminal Procedure (Act X of 1872).

Proceedings of 26th Jan. 1876. Weir, 85.

Where the intention of the accused is a material and necessary ingredient of an offence, the offence is not one which may lawfully be compounded.

CONTEMPT OF COURT.

Reg. v. Chunder Sekur Roy, 5 B. L. R. 100; S. C. 12 S. W. R., Cr. 18; 13 S. W. R., Cr. 66.

A Subordinate Magistrate has no power to try an offence punishable under section 174 of the Penal Code committed against his own Court, but is bound, under section 171 of the Code of Criminal Procedure (Act XXV of 1861) to send the case, if in his opinion there is sufficient ground for investigation to a Magistrate having power to try or commit for trial. Baijoo Baul *v.* Gugun Misser and Reg. *v.* Gugun Misser (8 S. W. R., Cr. R. 61) overruled.

Reg. v. Hurrynath Chowdry, 7 S. W. R., Cr. R. 58.

The proclamation issuable under section 159 Act VIII of 1859 cannot be legally affixed to the Mâl Cutcherry of a defaulting witness. Before the provisions of that section can come into play, personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt under section 174 of the Penal Code, and section 168 of the Code of Criminal Procedure (Act XXV of 1861) was quashed.

In the matter of C. Piffard & E. G. Francis, 1 Hydes Rep. 79.

A Barrister, offended by the use of a strong expression on the part of a Judge while sitting in Court, sends an officer to the Judge's private residence upon a pacific errand to ask for an explanation. Held by nine Judges out of eleven, that the party sending the message and the party conveying it are guilty of contempt of Court.

Reg. v. Modhoosurun, 7 S. W. R. Cr. R. 40.

An order striking off a case on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice.

Reg. v. Reazooddeen, 3 S. W. R. Cr. R. 33.

A person is guilty of contempt under section 185, Penal Code, by bidding for the lease of a ferry sold at public auction by a Magistrate, not intending to perform the obligations under which he lays himself by such bidding.

Reg. v. Rutun Sahoo, 11 S. W. R. Cr. R. 49.

Under section 163 of the Code of Criminal Procedure (Act XXV of 1861) if a Court before which the offence of contempt, under section 179 of the Penal Code is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt, and the statement of the accused, and forward the case to a Magistrate.

Reg. v. Tajumaddi Lahoory, 1 B. L. R. A. Cr. 1. S. C. 10 S. W. R. Cr. R. 4.

In consequence of the default of appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate to try the accused under section 174 of the Penal Code. Held that the Deputy Magistrate had

no jurisdiction to try the case, it not having been referred to him "either "on complaint preferred directly to the Magistrate or on the report of a police officer." Held also that, notwithstanding section 219 of Act XXV of 1861, the accused might have been proceeded against under section 174 of the Penal Code.

Abdul and Mahtab in re 8 S. W. R. Cr. R. 32.

The High Court, as a Court of Record, has the power of summarily punishing for contempt. Any officer of the High Court who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court is guilty of a gross breach of duty and a contempt of Court. So also any person who offers or gives such present is guilty of a contempt of Court.

Mehal Mahtee prisoner, 9 S. W. R, Cr. R. 13.

A Collector who entertains a charge under section 168 of the Code of Criminal Procedure (Act XXV of 1861) of an offence against any Court or public servant, should not try the case himself as Magistrate, nor unless under very exceptional cases, give evidence as a witness before himself as Magistrate.

Prokash Chunder Doss, petitioner, 12 S. W. R., Cr. R. 64.

In a conviction under section 228 of the Penal Code, it ought to be stated that the Judge was sitting in a stage of a judicial proceeding, the nature of which should be stated.

Empress v. Sukhari, 2 I. L. R. All. 405.

Where a settlement officer, who was also a Magistrate, summoned, as a settlement officer, a person to attend his Court, and such person neglected to attend, and such officer, as a Magistrate, charged him with an offence under section 174 of the Indian Penal Code, and tried and convicted him on his own charge, held that such conviction was, with reference to sections 471 and 473 of Act X of 1872, illegal.

Reg. v. Bisheshur Pershad, 2 N. W P. Rep. All 441.

An accused person, against whom a proclamation has been issued, must until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf. The High Court is not empowered to interfere under the provisions of section 404 of the Criminal Procedure Code, (Act XXV of 1861) until there has been a judicial proceeding by the Magistrate. A person complaining of irregularity of process issued for his arrest and for the attachment of his property, before applying to the High Court under section 404 of the Criminal Procedure Code, should make application to the Magistrate issuing such process for his discharge and the release of his property, on the ground of the informality of the warrants.

Srinivasa Ayyangar v. The Queen, 4 I. L. R Mad 393.

A Collector, who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a Tahsildar accused of extortion in the discharge of his executive duties, is authorized under the provisions of Madras, Act III of 1869 to issue summonses for the attendance of persons whose evidence may appear

to him necessary for the investigation. In order to prove the commission of an offence under section 172 of the Indian Penal Code, the prosecutor must show that a summons, notice, or order has been issued, and that the accused knew, or had reason to believe, that it had been issued. To abscond to avoid the service of process, which has not issued, is no offence under section 172 of the Indian Penal Code: Absconding does not necessarily imply change of place, but may be effected by concealment. If a person having concealed himself before process issues, continues to do so after it has issued, he absconds.

Reg. v. Gaji Kom Ranu, 1 I. L. R. Bom. 311.

Giving false evidence is "an offence committed in contempt of the the authority" of a Court within the meaning of section 473 of Act X. of 1872. Reg. *v.* Navranbeg (10 Bom. H. C. Rep. 73) and the ruling in 7 Mad. H. C. Rep. appx. XVII. followed. Reg. *v.* Kultaram Singh, I. L. R. I. All. 129 and Reg. *v.* Jagut Mull ibid, 162 dissented from. See also the case of Sufatoolah (22 S. W. R. Cr. 49) in which the Calcutta High Court took the opposite view to that taken in the present case.

Reg. v. Parsapa Mahadevapa, 1 I. L. R. Bom. 339.

Section 473 of the Code of Criminal Procedure (Act X of 1872), which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Chapter X of the Indian Penal Code, but extends to all contempts of Court.

(Reg. *v.* Kultaram Singh, I. L. R. I. All. 129) dissented from 7 Mad. H. C. Ap. XVII. approved, Reg. *v.* Navranbeg Dulabeg (10 Bom. H. C. Rep. 73) followed.

Muse Ali Adam, 2 I. L. R. Bom. 653.

In cases of contempt of the lawful authority of a public servant, the complainant referred to in section 210 of the Code of Criminal Procedure (Act X of 1872), is the public servant whose authority has been resisted, and without whose sanction no criminal proceedings can be instituted against the offender, and not the person injured by the resistance.

Imperatrix v. Sirasapa, 4 I. L. R. Bom. 15.

An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court, commits no offence punishable under section 180 of the Indian Penal Code.

Panchanada Tambiran, petitioner, 4 Mad. Rep. 229.

A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting the fine.

Proceedings of 26th July 1869, 4 Mad. Rep. Rul. 52.

A Subordinate Magistrate who issues a summons may take cognizance of the offence of disobedience to that summons notwithstanding the repeal of Madras, Act I of 1863.

Proceedings of 18th Jany. 1870, 5 Mad. Rep. Rul. 15.

The defendant was arrested by a warrant and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do and was convicted under section 174 of the Penal Code: Held, that the conviction was good.

Proceedings of 9th Jan. 1871, 6 Mad. Rep. Rul. 14.

The defendant was convicted of contempt of Court under section 163 of the Code of Criminal Procedure (Act XXV of 1861) for having refused to sign a deposition given by him as a witness in the couse of a revenue inquiry. The High Court set aside the conviction.

Proceedings of 11th Jany. 1871, 6 Mad. Rep. Rul. 16.

The Magistrate convicted the defendant of contempt of Court under section 163 of the Code of Criminal Procedure (Act XXV of 1861) and sentenced him to pay a fine of Rs. 10 or in default two days' imprisonment. Held, that the Magistrate had not exceeded his powers.

Proceedings of 20th Feby. 1872. 7 Mad. Rep. Rul. 3.

A conviction under section 174 of the Penal Code for disobeying a verbal order of a village Magistrate is good.

Proceedings of 20th Dec. 1872. 7 Mad. Rep. Rul. 14.

Accused was convicted, under section 174 of the Penal Code, of disobedience to a summons addressed to him as defendant in a suit brought before the Collector under Reg. VI of 1831. The summons did not specify the place at which his attendance was required. Held, that on this ground the conviction was illegal.

Proceedings of 5th Jany. 1875. 7 Mad. Rep. Rul. 43.

Complainant, a batta peon, arrested defendant on a warrant and asked him to follow him. Defendant promised to do so, went into his house on the pretext of fetching a turban and absconded. Held that a conviction under section 174 of the Penal Code was illegal.

Reg. v. Purshotam Valji, 5 Bom. Rep. Crown Cases, 33.

The Chairman of Municipal Commissioners appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. Held accordingly, that disobedience of such an order was not an offence within section 174 of the Indian Penal Code.

Reg. v. Narainappa Comte, 5 Bom. Rep. Crown Cases, 39.

Held that a conviction under section 174 of the Indian Penal Code for "having intentionally omitted to attend the Mahalkari's Katcheri to give evidence in a revenue case, under sections 26 and 29 of Reg. XVII of 1827, though the summons issued was duly served upon the accused" was not illegal.

Kashinath Vakil v. Daji Govind, 7 Bom. Rep. Ap. Civ. 102.

When a Civil Court omitted (as directed by section 163 of the Code of Criminal Procedure (Act XXV of 1861) to call upon a person who was charged with contempt of Court to make any statement he might wish to make in his defence, it was held that this irregularity was fatal to the order, and that the High Court would exercise its extraordinary jurisdiction, and reverse an order so made.

Reg. v. Jaimal Shravan, 10 Bom. Rep. 69.

Prevarication by a witness may, though it does not necessarily, amount to contempt of Court within the meaning of section 228 of the Indian Penal Code and section 435 of the Code of Criminal Procedure (Act X of 1872).

Surendranath Banerjee v. The Chief Justice, 10 I. L. R. Calc. 109.

The High Courts in the Indian Presidencies are superior Courts of Record. The offence of contempt of Court, and the powers of the High Courts to punish it, are the same in such Courts as in the superior Courts in England. Those powers, which formed part of the common law, were conferred upon the Supreme Courts, when they were established in the Presidency Towns.

The Indian Penal Code does not provide against a contempt of Court committed by the publication of libel out of Court, when the Court is not sitting, and neither in Chapter XXI "of Defamation," nor elsewhere provides for the punishment of a contempt of Court committed by the publication of a libel reflecting upon a Judge in his judicial capacity, or in reference to his conduct in the discharge of his public duties. Because the publisher can be punished for "defamation" under the Code, it does not follow that he cannot be punished summarily by the High Court for a contempt of Court. He can be so punished with fine or imprisonment, or both.

The provisions of Section 5 of the Code of Criminal Procedure 1882, relating to the procedure under which "all offences under any other law," are punished, do not include a contempt of the High Court committed by the publication of a libel out of Court, when the Court is not sitting, although such contempt may include defamation. Such a contempt is more than mere defamation, and is of a different character. The jurisdiction of the High Court to commit for contempt has not been affected by the Code of Criminal Procedure 1882. By the common law every Court of Record is the sole and exclusive judge of what amounts to a contempt of Court.

Tayler v. Ranee Asmedh Koonwar, 4 S. W. R. Civ. Rul. 86.

It is contrary to the practice of all Courts of Justice, unfair to an adversary, and a contempt of Court, for a suitor under any pretext whatever to communicate with a Judge, except by public proceedings in open Court, respecting the merits of any case in which he is interested, and which is either pending in the Court of such Judge or likely to come before him.

Chutoorbhooj Bharthee v Macnaghten, 15 S W. R, Cr. R. 2.

The Queen *v.* Chunder Seekur Roy, ruling that a Court before which an offence is committed under Chapter X of the Penal Code cannot try the case itself,—followed, notwithstanding the argument of the Sessions Judge in this case that that ruling should apply only to certain cases under Chapter X.

Shib Pershad Chuckerbutty, petitioner, 17 S. W. R. Cr. R. 38.

Before convicting a person under section 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so.

Proceedings of 2nd Oct. 1877, in re 1 I. L. R. Mad. 305.

The prohibition in section 473 of the Criminal Procedure Code (Act X of 1872) is a personal prohibition.

Reg. v. Punamalai Nadan & others, 5 I. L. R. Mad. 199.

A refusal to receive a summons is not an offence under section 173 of the Indian Penal Code.

Reg. v. Vanam Subramanyam & another, 5 I. L. R. Mad. 377.

A summons issued by a Tahsildar to a Village Karnam to appear and give information required for the preparation of Census, Jamabundi, and Dowle accounts is not within the purview of Madras, Act III of 1869, and disobedience of such a summons is not an offence under section 174 of the Indian Penal Code.

Reg. v. Ramachandrappa & others, 6 I. L. R. Mad. 249.

The provisions of section 174 of the Indian Penal Code are not in conflict with the special provisions of sections 15 and 16 of Regulation IV of 1816. (Madras.) In ordinary cases disobedience to the summons of a village Munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it.

Reg. v. Gulabdas Kuberdas, 11 Bom. Rep. 98.

For the purposes of section 473 of the Code, an Assistant Session Judge is a different Court from the Session Judge. Accordingly, an offence, which is committed in contempt of the Session Judge's authority, is cognizable by an Assistant Session Judge.

Moheschunder Mookerjee, Appellant, S. W. R. 1864 Mis. Rul. 3.

A party who bids for an estate at a sale in execution with knowledge that he is not in a position to deposit the earnest money, obstructs the business of the Court, and is guilty of contempt of Court punishable under section 228 of the Penal Code.

Proceedings of 2nd Augt. 1879. Weir, 92.

A defendant, who, when examined as a witness before a Magistrate, made certain statements which he afterwards retracted, cannot be held guilty of a contempt of Court and dealt with under section 435, C. P. C.

Proceedings of 23rd Oct 1880. Weir, 93.

The use of vulgar language for purpose of emphasis does not constitute contempt of Court.

COUNTERFEITING.

Reg. v. Rughoonundun Puttronovees, 15 S. W. R., Cr. R 19.

In order to a conviction under section 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the appearance of authenticity to the document. The document must be of the nature mentioned in section 467 of the Penal Code.

Reg. v. Shurroop Chunder Doss, 2 S. W. R., Cr. R., 65.

The passing off a one-anna stamp as a one-rupee stamp, is not counterfeiting a one-rupee stamp.

1. Parushullah Mundul v. Kheroo Mundul.
2. Reg. v. Gurib Shek.
3. Ram Ruttun Saha v. Bawool Mundul, 23 S. W. R., Cr. R. 4.

Where the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly, or indirectly from surrounding circumstances.

Reg. v. Soorut, 4 N. W. P. Rep. All. 62.

The gist of an offence under section 241, Indian Penal Code, (passing as genuine coin known to be counterfeit) is that, a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit.

Reg. v. Sheo Bux, alias Sheopershad, 3. N. W. P. Rep. All. 150.

Section 239 of the Indian Penal Code is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.

Reg. v. Bapu Yadav and Rama Tulsiram, 11 Bom. Rep. 172.

The test of whether a coin is money or not, is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious. Held, therefore, that to counterfeit a coin of the Emperor Akbar's time was not an offence under sections 230 and 231 of the Indian Penal Code.

Reg. v. Foster, 24 L. J. N. S. M. C. 134.

On an indictment for uttering a counterfeit Crown piece knowing it to be counterfeit, proof that the prisoner, on a day subsequent to the day of such uttering, uttered a counterfeit shilling, is admissible to prove the guilty knowledge of the prisoner.

Proceedings of 17th Nov. 1863. Weir, 94.

The thing charged to be counterfeit coin must have some such resemblance to a genuine piece of coin as to show that it was intended to resemble and pass for it, though the imitation may be imperfect or the process incomplete.

CRIMINAL BREACH OF TRUST.

Reg v. Brinbadhur Putnaik, 5 S. W. R. Cr. 21.

The mere fact of there being a large deficit of salt without distinct proof of criminal misappropriation, is not sufficient to convict the Salt Darogah in charge of the golahs of Criminal Breach of Trust under section 409 of the Penal Code.

Bharut Chunder Christian, Appellant, 1 S. W. R. Cr. 2.

The making away with property of which a person has been put in lawful possession by superior authority is not theft, but Criminal Breach of Trust.

Reg. v. Rajkrishna Biswas, 8 B. L. R. App. I, S. C. 16 S. W. R. Cr. R. 52.

The accused, one Rajkrishna Biswas was charged with having committed Criminal Breach of Trust in respect of a pony which had strayed and been confined in the pound at the station of Dumjar under the Cattle Trespass Act, I of 1871, by appropriating the same to his own use when it was his duty as Sub-Inspector in charge of the Police station of Dumjar to have sold the animal by public auction under the provisions of the aforesaid Act. The accused alleged that the pony had been regularly sold by public auction in full compliance with the law, entries of which fact and of the amount realized had been duly made in the station and the pound-keeper's book and the money transmitted to the Magistrate's office; that the pony then passed through two hands, and was ultimately purchased by him from the last owner, who had no further need of the pony, and had expressed an intention to his neighbours of selling it, for his boy who had taken a fancy to the animal. The Officiating Magistrate of Howrah disbelieved the evidence of the several successive purchasers and those present at the alleged auction sale and the entries in the Police Station and pound-keeper's books, which were admittedly made by the witnesses for the prosecution, who were the immediate subordinates of the accused.

He held upon the evidence that no sale took place, though all the preliminaries to the sale had been performed and that the possession by the accused commenced from the time when the pony had been at his request tied to a kudum tree where the intended sale was to have been held. He therefore convicted him of Criminal Breach of Trust under section 406 of the Indian Penal Code, and sentenced him to a fine of 25 rupees, or in default to rigorous imprisonment for ten days. In his Judgment the Magistrate observed that the amount credited to Government as sale proceeds was nearly the full value of the pony. The record of this trial was sent for by the High Court under section 404 of the Criminal Procedure Code (Act XXV of 1861) and it was held as a point of law that the accused had

not committed any such offence as to bring him under the provisions of section 405, namely, that he had not dishonestly misappropriated or converted the pony to his use. The conviction was ordered to be set aside and the fine refunded.

Reg. v. Reghiline, 4 S. W. R. Cr. 21.

A prisoner acquitted of Criminal Breach of Trust may, on the same evidence, be convicted of dishonestly receiving stolen property.

Watson and Co. v. Bykantnath Dass, 14 S. W. R. Cr. R. 80.

Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII of 1850) provides punishment for an offence, any person committing such offence may be tried under that law.

Isser Chunder Ghose v. Peari Mohun Palit 16 S. W. R. Cr. R. 39.

To constitute the offence of Criminal Breach of Trust there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged.

Nobin Chunder Dutt in re 17 S. W. R. Cr. R. 50.

The accused being entrusted to put a proper amount of stamps on a letter and return such as might not be required, did not return them but misappropriated stamps to the value of two annas, and was convicted and punished under section 49 of the Indian Post Office Act, XIV of 1866 instead of under the Penal Code for Criminal Breach of Trust. As the accused had not been sentenced to larger amount of punishment than could have been awarded for Criminal Breach of Trust nor shown to have been prejudiced by the error of convicting him under the Post Office Act, the High Court could not, under section 426, Code of Criminal Procedure, (Act XXV of 1861) reverse or alter the sentence pointing out at the same time that this was one of those cases in which it was a mistake to look at the smallness of the amount misappropriated rather than to the gravity of the offence.

Reg. v. Okhoy Coomar Shaw, 13 B. L. R. F. B. 307; S. C. 21 S. W. R. Cr. R. 59.

A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted, or which he has dominion over, is guilty of an offence under section 405 of the Penal Code.

COUCH, C. J.—We think the words of section 405 of the Penal Code are large enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and has dishonestly misappropriated it or converted it to his own use. There is no reason that the case of a partner should be excepted from the operation of this section. Indeed there is every reason that it should be included in it. It is a question of fact whether there has been an entrusting of the property or giving a dominion over it, sufficient to come within what is required. But if it be made out by the evidence, that one partner was entrusted by his co-partners with property or with a dominion over it, and that he had dishonestly misappropriated it, or dishonestly used it in violation of the mode in which his trust was to be discharged, or of the agreement between the parties as to

the use he was to make of the property, he ought to be tried for that offence. I, therefore, think we should say that the decision, In the matter of the Petition of Lall Chand Roy (9 S. W. R., Cr. R. 37) cannot be supported, and that the Magistrate ought to enquire into the charge, and determine whether, upon the evidence which may be produced before him, there is sufficient ground for putting the accused upon their trial."

Ramsoonder Poddar and others, 2 C. L. R. 515.

Where a Magistrate, erroneously holding that the offence committed was one under section 406, Indian Penal Code, over which he had jurisdiction, instead of under section 409 which was cognizable only by the Court of Session, tried and sentenced the accused, it was held by the High Court, as a Court of Revision, that his proceedings were contrary to law, and he was directed to commit the case for trial by the Court of Session.

To constitute an offence under section 409, it is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity.

In the matter of a Reference from the Chief Presidency Magistrate, 6 C. L. R. 392.

The offence of Criminal Breach of Trust under section 406 of the Indian Penal Code, cannot under the terms of sections 213 and 214 of the same Code be lawfully compounded.

Proceedings of the High Court, dated 22nd Feb. 1876, 1 I. L. R. Mad. 55.

The ordinary Criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863.

Proceedings of 18th Sept. 1866, 3 Mad. Rep. Appendix 6.

Conviction of the pledgee of a turban, on the charge of Criminal Breach of Trust for wearing it, quashed. Meaning of the word "dishonestly" in the Penal Code.

The High Court were of opinion that the deterioration of the article by use was not such a loss of property to the owner, and the wrongful beneficial use of property by the prisoner was not such a gain to him.

The High Court were, therefore, of opinion that the facts found did not amount to Criminal Breach of Trust, and they accordingly resolved to quash the sentence and directed the release of the prisoner.

Proceedings of 12th Feby. 1869, 4 Mad. Rep. Rul. 33.

A village shroff whose duty it was to assist in collecting the public revenue received grain from ryots and gave receipts as if for money received by virtue of a private arrangement. Held that he could not be convicted of Criminal Breach of Trust by a public servant under section 409 of the Penal Code, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue.

Proceedings of 23rd May 1871, 6 Mad. Rep. Rul. 28.

A person who pledges what is pledged to him may be guilty of Criminal Breach of Trust. There are two elements (i) The disposal in violation of any direction of law or contract expressed or implied, prescribing the mode in which the trust ought to be discharged. (2) Such disposal dishonestly.

R. H. Collyer, Appellant, 30th April, 1880. Not reported.

The facts of this case will appear from the following Judgment of Pontifex and McDonell, J.J. "We have heard Counsel at considerable length, both before and after sending for the record in this case, commenting on the nature and value of the evidence, and we have very carefully perused and considered the record.

The prisoner was convicted by the Magistrate under section 403 of the Indian Penal Code of Criminal misappropriation of certain jewellery. The circumstances are shortly as follows :—The prisoner in December or January last was at Delhi when he saw jewellery displayed for his approval he says by numerous jewellers. He gave his card with his Calcutta address to the witness Sohunlall Gomasta of the firm of Omrao Sing and Munnalall. Sohunlall says in his deposition : "I shewed him our jewellery and he selected this topaz necklace value Rs. 450, this gold necklace Rs. 191-8, this pair of bracelets value Rs. 197-8, this ruby and diamond ring value Rs. 335, this sapphire and diamond ring Rs. 300, and this ruby and diamond ring value Rs. 450, and another sapphire and diamond ring value Rs. 400, but that ring I don't see in Court to-day. These things the prisoner selected and told me to place them on one side for him and that when he got to Calcutta, he would send me a letter and I was to send the said jewellery down to him then." He gave me this card E. I saw the prisoner again when he was leaving Delhi for Calcutta, and I gave him my agent's address in Calcutta, *viz.*, Benarasi Dass, Rajah of Burdwan's Kutrah, Burra Bazar, Calcutta. Some time later I received this letter G from Calcutta bearing date the 17th March. In consequence of G. I despatched a parcel addressed to Dr. Collyer, 131 Dhurrumtollah Street, Calcutta. I addressed my parcel according to this envelope H. which I received enclosed in G. In that parcel was all the jewellery I have described. I sent this parcel insured by post and got this receipt I. for it from the Delhi Post Office." The witness is not justified in stating that it was in consequence of letter G. that he despatched the parcel, for the letter G. does not ask that the goods may be sent down. It is in the following words :—

131 *Dhurrumtollah Street, Calcutta, March* 17*th*, 1880.

Messrs. Omrao Sing and Munnaloll.

Please inform me what you will charge me for 1 necklace 5 links of bright yellow topaz and pearls, 1 ruby [E] and diamond ring. The ruby is not very deep in colour. One set of gold 18 carrat bracelets. I gave you my address when I was in Delhi two months and half since. You must put the price low otherwise I will buy all my jewellery in Calcutta. If you give me these cheap I will require much more."

Your's truly,
ROBERT COLLYER.

"Write me in English and the price of a good deep coloured sapphire ring of the size □ and also a good emerald ring." It is to be observed that this letter in the body of it only mentions one necklace, one ring and a pair of bracelets and in the postscript mentions two other rings. But if the witness Sohunlall is correct in saying that the articles mentioned in the letter were part of the articles selected by the prisoner at Delhi and is also correct in saying that while at Delhi the prisoner told him to place the articles on one side for him and that when he got to Calcutta he would send him a letter and that he was to send the said jewellery down to the prisoner in Calcutta, it will have been proved that it was in consequence of the prisoner's own request that the jewellery which he is charged with misappropriating was sent to him in Calcutta. As to the reliability of this witness's evidence on these points we shall have to comment hereafter. The prisoner has put in a letter purporting to have been written by his sister from America, the envelope of which, bears an American Post mark and a Calcutta post mark.—First delivery 27th March. The envelope and its enclosure are manifestly in the same handwriting, and there is no reason to doubt that it was sent from America. The envelope is addressed Post Office, Calcutta and there is an address in red ink evidently in the handwriting of an official of the Post Office, "131 Dhurrumtollah" which incidentally shews that the prisoner gave his true address in the letters and telegrams to which we shall have presently to refer; and indeed the parcel and the telegrams from the prosecutors at Delhi to that address were delivered to and were received by the prisoner. There can therefore we think be no prejudice against the prisoner on the question whether or not he gave a true address to the prosecutors. The letter from America states, "Can you trace our pedigree any further back than our great-grandparents? There was an advertisement in the Philadelphia papers inquiring for the heirs of Joseph Collyer, Linendraper of London." It also stated that the heirs were in America. My brothers and sisters have employed a lawyer. He has written to England. It is important that we should trace our pedigree further back than our great-grandparents. The money is in the bank. This Joseph Collyer died without a will. Fred and Frank intend sailing for England soon to ascertain all particulars. Fred came from California on purpose. If you can give any information let me have it at once. It is necessary to trace our pedigree as far back as two centuries." The letter was delivered as we have mentioned on the 27th March and the prisoner relies upon it to prove that it was only in consequence of its receipt that he suddenly formed the intention of leaving India.

The chronology of the prisoner's subsequent proceedings now becomes important. On the 29th of March he wrote to Omrao Sing and Munnaloll.

DEAR SIRS,

"I have been too ill with gout in my right arm to examine your articles carefully. I do not think the pearls in the necklace are near as large as the ones I saw in Delhi. The ruby ring is also much smaller. In the course of four days, I will select those things I want and make you a fair offer for the same. I do not want so much jewellery for myself. I have been very sick with this attack of gout. By the 8th of the month of April I will decide. I am sorry you sent the things to me as I merely

asked you the price. I was under the impression that 1,300 rupees was the price you agreed to take."

It is to be observed that he says—"I am sorry you sent the things to "me as I merely asked you the price" which is a true statement of his letter G. but does not quite displace the evidence of Sohunloll as to what had previously taken place at Delhi, which evidence is to some extent confirmed by the passage—"I was under the impression that Rs. 1,300 was the price you agreed to take."

On the 30th March the prisoner went to the office of the Messagerie Company according to the evidence of Mr. Frederick to take a passage in the "Meinam" for Europe. "I told him to come the next day." On the same day, the 30th March but whether after or before his interview with Mr. Frederick does not appear, he wrote letter M. which is as follows :—

"DEAR SIRS,

"I have an intention of again visiting Agra, Delhi and other cities of India. The jewellery you sent me is beyond the price I had agreed with you. It is too much. I am willing to pay you a fair price.

"Your's truly,
"ROB. H. COLLYER,
"131 *Dhurrumtollah Street, Calcutta.*"

It is difficult to understand why he should have written letter M. on the 30th March when he had written letter L. only on the preceding day. But the paper on one side only of which letter M. is written contains on the inside a letter dated 22nd March purporting to be addressed by the prisoner to Mr. C. E. Bernard as Secretary to the Government of India in relation to an improvement in his Rhea fibre process, which he alleges would reduce the expense of it by fifty per cent. On the 31st March Mr. Frederick says, "he came again and I told him he could have a second class passage, and that I would send him the ticket. He told me his name was Dr. Collyer, but I was to send him the ticket under the sobriquet of Dr. Hanham to him Dr Collyer at 79 Dhurrumtollah," and in cross-examination the witness said, the prisoner told him to change his name to Hanham because he had a patent of "Rhea" and did not wish his name to be known publicly. On the same day 31st March, but whether before or after his interview with Mr. Frederick does not appear, the prisoner again wrote to Delhi as follows :—

Calcutta, March 31st 1880.

Messrs. Omrao Singh and Munnaloll.

DEAR SIRS,

I expect to be in Delhi very soon, except I am prevented for a few days. Shall I return the things or bring them with me to Delhi? Answer at once.

Yours very truly,
ROB. H. COLLYER.

"I want to buy wholesale for 20,000 rupees worth of Delhi jewellery, but the price must be wholesale as it is for speculation. I would purchase and send the jewellery to Europe."

From the letters to which we have referred we think it quite clear that the prisoner knew perfectly well that the jewellery which he had received belonged to Omrao Sing and Munnalall, and it is impossible for us to believe when he sent the letter of the 31st March he had not made up his mind to leave for Europe if possible by the "Meinam" which sailed early on the morning of the 4th of April. On the 1st April the prisoner called on the Deputy Commissioner of Police Mr. Lambert, whose evidence is as follows:—"He came to me and asked me to take charge of a tin box like this produced, containing jewellery and some rings. I only looked at two rings but I think there were four rings. I also saw a necklace like this one produced. I declined to take charge of the jewellery because the prisoner said he was uncertain to whom it belonged and he was leaving the country." On cross-examination he said I think the prisoner stated that he was leaving by the French Steamer on the following Sunday.

The prisoner told me he knew Mr. Matthewson and I said, "Then why not give the jewellery to Mr. Matthewson. To the Court.—I understood from the prisoner that he did not know who the property had come from and therefore I refused to take it. I advised the prisoner to try and find out the owners."

The letter A. which the prisoner left with or gave to Mr. Lambert was as follows:—

"To the Police Authorities, Calcutta."

"When in Delhi from the 12th of December 1879 to the 20th of that month, no less than twenty jewellers called on me at the Hotel and exhibited their wares. They all gave me their cards of address. Some of the jewellery was very fine, and I expressed myself as being much pleased. Last month I wrote some four letters to the best of these people, merely asking them wholesale price but giving no orders for any jewellery to be sent me. On the 26th ultimo I was ill in bed with fever and gout. A parcel arrived for which I gave a receipt. I also wrote several letters that it was my intention to visit Delhi shortly, which was the case until a few days since when I received letters from Europe, which have caused me to leave India at once. I am under the impression that the jewellery is the property of Omrao Sing and Munnaloll though I am not certain of this fact. As I am receiving the parcel with seven prices of jewellery I at once wrote to the several parties in Delhi and have received no reply. I am therefore necessitated to leave these articles whose value I have no idea of with the Commissioner of Police at Calcutta as they are no use to myself.

"*April* 1*st*, 1880.

"Yours truly,
"ROB. H. COLLYER"

It may be doubtful whether the prisoner referred to the four letters of the 17th, 29th, 30th and 31st March when he stated "Last month I wrote some four letters to the best of these people." But there is no evidence to show that the prisoner ever wrote any other letters to, or received any other letters from jewellers at Delhi. The statement made in this letter of the 1st of April "I also wrote several letters that it was my intention to visit Delhi shortly which was the case until a few days since when I re-

ceived letters from Europe" is not a very accurate statement of the facts for he received his letters from Europe (America) on the 27th of March and wrote on the 30th and 31st of March expressing his intention to visit Delhi.

We think it clear that the statement the prisoner made to Mr. Lambert and the statement contained in letter A. were not candid. We are fully satisfied that the prisoner knew that the jewellery had been sent by Omrao Sing and Munnalall, and we are confirmed in this by the telegram which the prisoner sent to Delhi despatching it from Calcutta at 11 A. M. on the 1st April. That telegram was as follows :—

To Delhi from Calcutta.

To Omrao Sing and Munnalall, Jewellers.
Jaun Bazar.

FROM DR. COLLYER,

Leave for Europe send list of Jewellery. Indicate person to receive it.

The telegram it will be observed does not state the date (April 4th) of the prisoner's departure for Europe but the letter of the 29th March written two days after the receipt of the letter from America and which would arrive in Delhi on the same day as the telegram had stated "By the 8th of the month of April I will decide."

On the 2nd April the prisoner received a telegram from Omrao Sing and Munnalall referring him to their agent one Benarasi Dass, but without giving his address. We think that this telegram at all events, makes it clear that on its receipt the prisoner must have become fully aware that Omrao Sing and Munnalall were the owners of the jewellery and he had a full day (the 3rd of April) to act upon that knowledge. On the other hand it is in favour of the prisoner that the telegram was addressed to 131 Dhurrumtollah and it reached him.

The reference to Benarasi Dass may, we think, be disregarded, for even if the witness Sohunlall is correct in saying that at Delhi he gave the prisoner the address of Benarasi Dass, that address might very well have been mislaid. But notwithstanding the telegram of April the 2nd the prisoner sought no further interview with Mr. Lambert and took no further steps for disencumbering himself of jewellery to the value of over Rs. 2,000 and we have it on the evidence of his own witness Michel Sevastopoli that the prisoner on board the steamer told him to see the jeweller and say that he would sell the jewellery in England and remit him the money. This was no doubt merely a statement of intention, but it was an intention that the prisoner was not entitled to carry into effect. Unfortunately before the Magistrate the prisoner defended himself and the Magistrate was compelled as we are compelled to decide upon the evidence before him.

We have seen the prisoner at least making overtures for large purchases of jewellery. It would have been satisfactory if it had been shewn that he was in a position to make such purchases.

After full consideration of the letters written by the prisoner to Delhi on the 17th, 29th and 31st of March and of his statement to Mr. Lambert

and his statement in letter A. we see no reason to disbelieve the evidence of Sohunlall, that the prisoner at Delhi gave directions that the j eller should be sent to Calcutta on the receipt of a letter from him, an unde. the circumstances, we think it was the prisoner's plain and positive duty, even at his own expense, to return the goods to Omrao Sing and Munnalall, whom we are convinced, he thoroughly well knew to be the owners, and we think it surprising that having written the letters of the 30th and 31st March which seem quite unnecessary after his letter of the 29th March the prisoner did not at least write to Delhi to inform the prosecutors of his having taken his passage for Europe by the "Meinam" which would leave on the 4th April and stating his change of name and where he might be communicated with.

But the most important question remains to be considered, Sohunlall deposed "I despatched a parcel directed to Dr. Collyer." In that parcel was all the jewellery I have described including four rings and afterwards he said "The ring that is missing is a sapphire and diamond. There were two diamonds in it." This witness was cross-examined but no question apparently was directed to shew that his evidence was false in this particular. His statement is to some extent corroborated by the telegram sent from Delhi on the 2nd April before any complaint was made or suspicion raised against the prisoner, which distinctly mentions four rings. It is further slightly confirmed by Mr. Lambert's evidence who says, "I only looked at two rings but I think there were four rings." The warrant under which the prisoner was apprehended also mentions four rings and Frederick Marshall the officer who arrested the prisoner at Madras deposes:—"I asked the prisoner where the fourth ring mentioned in the warrant was but he did not produce it." On this point he is only cross-examined as to his having made a search in the prisoner's boxes.

In the letter A. the prisoner speaks of the parcel he received having contained seven pieces of jewellery which is ambiguous according as the pair of bracelets is counted as two pieces or one piece. It is certainly strange that the prisoner's grounds of appeal do not purport to deal directly with this question. The Magistrate believes Sohunlall's evidence on this point, and we do not see any reason for disbelieving it and therefore we are compelled to hold that the decision of the Magistrate was correct in finding that the prisoner dishonestly appropriated the jewellery to his own use, and having heard Counsel for the prisoner very fully upon the whole evidence we think we ought not to admit the appeal. We accordingly reject this application.

Reg. v. Subdar Meeah, 3 S. W. R. Cr. R 44.

A constable who dishonestly misappropriates to his own use the pay of his thannah police entrusted to him is guilty of Criminal Breach of Trust.

Reg. v. Tofuzzal Aly, 7 S. W. R. Cr. R. 109.

A Nazir is the head of an important department, and must be responsible for the truth of what he reports or admits. He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him.

Reg. v. Golab Khan, 1 B. L. R. Short Notes 21; S. C. 10 S. W. R. Cr. 28.

Prisoner, a gomasta, took from his employers, between the 15th April and 30th June, sums aggregating Rs. 600-2-3, for the purchase of wood. During that period he supplied wood to the value of Rs. 234-7-6, but the prosecutor alleged that most of that was to be set off against the balance at debit of prisoner on account of the year before; and that, as a fact, the value of fire-wood supplied from the advances of April to June was only rupees 34. Prisoner was charged with Criminal Breach of Trust as a servant. The defence was, that he had purchased wood, and made advances on that account. This defence was shown to be false, and the Joint Magistrate convicted the prisoner and sentenced him to 15 months' rigorous imprisonment. On appeal, the Judge held, that the prosecutor's right to set off a portion of the wood supplied to an old balance, was a question for a Civil Court, and a criminal charge could not be decided by the result of any such proceeding. The mere non-supply of the wood raised no presumption of misappropriation of the advances. See Roscoe's Digest, page 429. The Judge reversed the Joint Magistrate's decision, and acquitted the prisoner.

The prosecutor applied to the High Court for a revision of the proceedings under section 404, Criminal Procedure Code. (Act XXV of 1861.) The Judgment of the Court was delivered by GLOVER, J. :—" We think the view taken by the Judge in this case is incorrect. He holds that, in this case the prisoner has merely failed to account satisfactorily for sums received; and that this failure to account does not establish a charge of embezzlement; and in support of his view, he has quoted the case of a clerk on a Mail Coach Establishment reported in Roscoe's Digest, who, when charged with embezzlement for not entering in account and remitting to his employers money received for passengers and parcels, was held not to be guilty of embezzlement, but only of default of payment. If the prisoner regularly admits " the receipt of the money, the mere fact of not paying it over is not a felony, it is only a matter of account." Had the Judge gone a little further in Roscoe, he would have found these words; " In general the act of embezzlement cannot be said to take place until the party who has received the money, refuses to account for it, or *falsely* accounts for it." The facts in the present case are patent. The prisoner admits that he received money from the complainant to procure wood for the use of the factory. He has not supplied wood, and he has attempted falsely to account for the expenditure of the money advanced to him, and the parties to whom, he says, he paid the money, and from whom he purchased wood, deny the transaction, and it is not said that their evidence is not worthy of credit. Under these circumstances, the Joint Magistrate convicted the prisoner of Criminal Breach of Trust under the provisions of section 408 of the Penal Code, and sentenced him to rigorous imprisonment for 15 months. The prisoner was in the employment of Messrs. Watson, as a gomasta, and in that capacity was entrusted with sums of money aggregating Rs. 600 between 15th April and 30th June 1867. He did not supply the wood, and when called upon to account for the money, falsely stated that he had purchased wood, from various parties, though it is proved that he had not purchased a stick from any of them. We think the finding of the Judge on the point

of law is incorrect, and that the prisoner is guilty of a Criminal Breach of Trust. We, therefore, reverse the order of the Judge, and restore that passed by the joint Magistrate upon the prisoner.

Bhoobun Singh prisoner, 9 S. W. R. Cr. R. 36.

Where an accused was charged before the Sessions Judge under both section 409, Penal Code, and under the Special Law, section 29, Act V of 1861, and was acquitted under the former section, it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone has jurisdiction to convict under that law.

Reg. v. Jaffir Naik & another, 2 Bom. Rep. 127.

A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a Criminal Breach of Trust under section 405 of the Indian Penal Code.

Reg. v. Gaun Valad Ramchandra, 4 Bom. Rep. Crown Cases, 3.

In a case referred by a District Magistrate, on the ground that the accused had been convicted, under section 403 of the Penal Code, of dishonest misappropriation of property; whereas the charge should have been, under section 406, of Criminal Breach of Trust,—an offence not within the cognisance of the Second Class Subordinate Magistrate who passed the sentence:—The Court annulled the conviction and sentence; and directed the case to be tried before a proper Court.

Reg. v. Babaji bin Bhau and another, 4 Bom. Rep. Crown Cases, 16.

On a reference by a District Magistrate under section 434 of the Criminal Procedure Code (Act XXV of 1861) where the conviction by a Subordinate Magistrate was for cheating, when it should have been for Criminal Breach of Trust for which the punishment awarded was a legal one:—Held, that there was no occasion for the Court to interfere with the conviction or sentence.

Reg. v. Kareem Bux, 3 N. W. P. Rep. All. 30.

If it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own monies, expending, thereout monies on his master's behalf, and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution. And where a landowner permits the agent to mix the collections with his own monies, if the agent applies the monies so collected to his own use fraudulently and dishonestly, and falsifies the account so as to conceal his fraud, there is evidence of a criminal misappropriation.

Reg. v. Dukaran, 7 N. W. P. Rep. All. 196.

Where a person was convicted by a Magistrate, under section 409 of the Indian Penal Code, for committing Criminal Breach of Trust in the capacity of a public servant, and was acquitted by the Sessions Court on appeal on the ground that the Breach of Trust was not committed in such capacity, and the facts proved constituted the offence of Criminal Breach of Trust, the High Court, on the appeal of Government, directed a new trial by the Magistrate on charges under section 406 of the

Indian Penal Code, under the provisions of section 272 of Act X of 1872. The Court concurred in the view taken by the High Court of Madras (VII Mad. H. C. R., 339) that the powers under section 272 should be exceptionally exercised.

Bapu Daldi v. The Queen, 5 I. L. R. Mad. 23.

B. entrusted with rice at M. (a port in British India) for conveyance to C. (also a port in British India) took the rice to G. a port in foreign territory, and there sold it. He was convicted at M. of Criminal Breach of Trust as a carrier under section 407 of the Indian Penal Code. Held that the Sessions Court at M. had no jurisdiction to try the offence under the Code of Criminal Procedure.

Judgment.—" In this case the prisoner has been tried and convicted of Criminal Breach of Trust as a carrier under section 407 of the Indian Penal Code, and sentenced to 4 years and 6 months' rigorous imprisonment and 500 rupees fine, or, in default, to be rigorously imprisoned for a further period of 15 months. The prisoner was originally tried for this offence in 1869, but the High Court, on the 10th January 1870 ordered a re-trial. Prisoner, however, escaped as he was being brought back from the Cannanore Jail, and has only lately been re-arrested.

The evidence for the prosecution tends to show that certain rice was entrusted at Mangalore to prisoner, who was the tindal of a pattimar, for conveyance to one *Kesava Naik* at Calicut. After prisoner got to sea, instead of taking his pattimar to Calicut, he went off to Goa and there sold the rice. In the case, as formerly tried, it was held by the High Court that, assuming that the deviation of prisoner from his course took place beyond a marine league from the shore, the Court with local jurisdiction would, under certain English Statutes, only have jurisdiction over the offence if there had been a complete conversion of the property at the time and place of the deviation, since deviating from the course with intention to convert or misappropriate, though sufficient under the Indian Penal Code to complete the offence, would not satisfy, the English Statute creating the offence of larceny by a carrier. The actual conversion (breaking bulk &c.) was found to have taken place at Goa. This being foreign territory, the ordinary jurisdiction of the British Indian Courts was excluded, but the Sessions Judge of Mangalore had power to give himself jurisdictiou over the offence, though committed in foreign territory, by recording an order under Act I of 1849. The High Court ordered a re-trial as the Judge had not thus given himself jurisdiction. But the re-trial was prevented by the circumstances already adverted to. The Sessions Judge, before proceeding to re-trial of the prisoner recorded proceedings to the effect that section 67 of the present Criminal Procedure Code (Act X of 1872) appears to give him jurisdiction though the offence was committed at Goa, that it is very doubtful if the Judge of to-day has any power to give himself jurisdiction to try offences under the repealed Act, I of 1849, but that in order to be on the safe side and avoid, if possible, the necessity for a third trial in this case, he had proceeded to record a formal order giving himself jurisdiction over the offence in question. He added, " This formality together with the provisions of section 70 of the present Code will, I trust

be sufficient to prevent the present trial also being set aside." If, as appeared in the former case and as the evidence in the present case shows, the offence was committed at Goa, section 67 of the Procedure Code cannot give jurisdiction as supposed by the Sessions Judge. That section is part of a Code of Procedure for the trial of offences committed in *British India.* It extends to the whole of *British India,* but cannot give the Courts jurisdiction over offences committed beyond the limits of *British India.* The words "journey or voyage" spoken of in it do not include a voyage on the high seas or in foreign territory, but are confined in their meaning to a journey or voyage within the territories of *British India,* as down the Ganges or the Buckingham Canal; nor can section 70 of the Procedure Code render the trial effectual notwithstanding that the Court had not jurisdiction over the offence. That section as well as section 67 has relation only to a trial of an offence committed in *British India,* in which the only defect is that some Court in *British India* other than the Court which actually tried the charge, had local jurisdiction over the offence. Nor can an order under Act I of 1849 give the Judge jurisdiction or validate the trial. That Act was repealed by Act XI of 1872, and that latter Act has been again repealed by Act XXI of 1879. This latter Act admits of proceedings being taken in *British India* in such a case only on the condition that the person charged is a native Indian subject of Her Majesty and that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory (section 9, Act XXI of 1879).

As ruled by this Court in the former proceedings in 1869, if the intention to commit the offence and the act of deviating from the course with that intention took place upon the High Seas, but the act of conversion did not take place till Goa was reached, there was no offence committed on the High Seas so as to give the Court jurisdiction under 12 and 13 Vict. Cap. 96 as extended by 23 and 24 Vict. Cap. 88.

We are of opinion that the Judge had not jurisdiction in the circumstances to try the case, and that the trial cannot be upheld. The conviction and sentence must be set aside and the proceedings quashed. It will be open to the Court to move the Magistrate to take proceedings under Act XXI of 1879.

Reg v. Diaz, 3 Bom. Rep. Crown Cases, 51.

A conviction and sentence for Criminal Breach of Trust as a public servant, reversed, owing to irregularities in the preliminary inquiries, and irregular procedure as to the examination of the prisoner in the Court of Session.

Proceedings of 29th August, 1879. Weir, 250.

The Criminal Procedure being in force in British Burmah, a complaint of criminal misappropriation or breach of trust of property entrusted at Rangoon may, when the accused resides in the Madras Presidency, be inquired into or tried by any competent Magistrate or Court in the Madras Presidency.

Proceedings of 30th June, 1868. Weir, 176.

Section 405 construed. The two essentials of the offence under section 405, first part, are (1) a trust and (2) a dishonest misappropriation.

Proceedings of 20th Aug. 1880. Weir, 177.

Where a cloth was entrusted to the accused, a washerman, on the understanding that it was not to be washed by men of a certain class, and the accused allowed the article to be worn by one of the prohibited class, the article being thereby rendered valueless to the owner: Held that the act constituted neither criminal breach of trust nor cheating.

Proceedings of 19th Nov. 1880. Weir, 178.

Excessive delay in remitting revenue collections to the treasury, held to be evidence of a dishonest misappropriation on the part of a village officer.

Proceedings of 2nd October, 1877. Weir, 251.

Where an accused person who was entrusted with property at Kandy in Ceylon left the colony taking the property entrusted to him to British India, and was arrested at a Station in British India on a charge of Criminal Breach of Trust: Held, that as the act by which the accused originally became possessed of the property was committed in Ceylon, no Court in British India had jurisdiction in respect of such act nor had any such Court jurisdiction, in respect of the accused's subsequent acts in remaining in possession of the property, the possession of which was acquired by the act committed in Ceylon.

In the absence of compliance with the provisions of the Extradition Act (Act XI of 1872) no Court in British India can recognize as offences acts over which they have not, by virtue of section 2 of the Penal Code, territorial jurisdiction.

CRIMINAL INTIMIDATION.

Reg. v. Moroba Bhaskarji, 8 Bom. Rep. Crown Cases, 101.

Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar and would get him six months' imprisonment if he (the complainant) did not let his sister go; Held that these words did not constitute either Criminal Intimidation, within the meaning of section 503 of the Indian Penal Code (there having been no threat of an injury in the sense of the Code), or any other offence known to the law. Where there is anything peculiar in the circumstances of a case, a Criminal Appellate Court should notice it even when such Court confirms the conviction by the Court which tried the accused.

Proceedings of 21st Jan. 1865. Weir, 226.

A threat addressed to neighbours may be sufficient to constitute the offence, (I. P. C. section 506) if it is found that the threat was intended to reach the prosecutor.

CRIMINAL MISAPPROPRIATION.

Reg. v. Abdool, 10 S. W. R. Cr. R. 23.

To bring a prisoner within section 403 of the Penal Code, there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his

possession, he was acquitted of criminal misappropriation under the section referred to.

Reg. v. Baney Madhub Ghose, 8 S. W. R. Cr. R. 1.

Where a Court Inspector improperly delegated to a constable the custody &c. of Government money (taking from him private security to save himself from loss in case of defalcation,) and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under section 408 and not section 409 of the Penal Code, and the sentence reduced from 10 years' transportation and a fine of Rs. 500 to one year's rigorous imprisonment without fine.

Reg. v. Bissessur Roy, 11 S. W. R. Cr. R. 51.

A servant who retains in his hands money which he was authorized to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation.

Reg. v. Boystum Moochee, 17 S. W. R. Cr. R. 11.

This was considered to be a matter of trade between the prosecutrix and the prisoner who took certain hides from the former but refused to pay for them, and was held not guilty of dishonest misappropriation under section 403 of the Penal Code.

Reg. v. Kurreem Bux, 3 N. W.P., R. All. 30.

If it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own money, expending thereout moneys on his master's behalf; and handing over the balance to his master and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution. And where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the moneys so collected to his own use fraudulently and dishonestly, and falsifies the amount so as to conceal his fraud, there is evidence of a criminal misappropriation.

Reg. v. Parbutty Churn Chuckerbutty, 14 S. W. R. Cr. R. 13.

In a case in which the accused is charged with having dishonestly appropriated property under section 403 of the Penal Code, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it and disposes of it.

Reg. v. Ram Dhone Dey, 13 S. W. R., Cr. R. 77.

Section 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a functionary. Where, therefore, it was proved that the Head Clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of section 409, when he made away with the stamps.

Sreekant Biswas in re, 5 S. W. R. Cr. R. 56.

The mere fact that the prosecutor gave the prisoner time to make out his accounts and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.

Chetter C. A., Appellant, 15 S. W. R. Cr. R. 5.

The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a committing officer in such a case is to select certain distinct items to frame his charges upon them, and to adduce evidence specially upon those items.

JACKSON, J. .....

There cannot be less than fifty different offences in this way mixed up together in this one case, each different item of offence requiring distinct evidence to prove it. The difficulty to any individual who has so many charges brought against him in one single commitment in adducing his evidence upon each separate item is inconceivable. It is a hardship to which no one should be subjected. The duty of the committing officer in such a case is to select certain distinct items, and to frame his charges upon them—to adduce evidence specially upon those items—to prove that although the monies relating to them were made over to the prisoner, for a certain specific purpose, he had not applied them to that purpose but had misappropriated them.

Reg. v. Shamsoondur, 2 N. W. P. Rep. All. 475.

Where money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its re-fund, discovers the mistake and determines to appropriate the money, he is guilty of criminal misappropriation, but he is not guilty of cheating.

Proceedings of 30th June 1874, 7 Mad. Rep. Rul. 34.

An offence under section 404 of the Penal Code is not one of the class of offences that may be compounded.

Reg. v. Girdhar Dharamdas, 6 Bom. Rep. Crown Cases, 33.

Held, that section 404 of the Indian Penal Code (relating to the misappropriation or conversion of "property" left by a deceased person) does not apply to immoveable property.

Reg. v. Nobin Chunder Sirkar, 12 S. W. R. Cr. R. 39.

Held that it is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under section 404 of the Penal Code, that the accused should misappropriate to his own use. Held by MARKBY, J. that under section 404 all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive.

Enayet Hossein, petitioner, 11 S. W. R. Cr. R. 1.

A person may commit the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death (section 404, Penal Code) by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use.

Empress v. Kewa Ram and another; 10 C. L. R. 187.

A person having made a hole in the wall of his own house broke open a box and removed the contents to which he believed himself entitled but as to which there was a dispute, making the removal appear to have been the act of thieves from the outside, was charged with criminal misappropriation under section 403 and with fabricating false evidence for the purpose of its being used in a stage of a judicial proceeding, under section 193 of the Penal Code. It did not appear that any charge had been laid by the accused against any one in respect of the removal of the contents of the box. Held, that the circumstances cannot warrant the charges under either section of the Penal Code.

Proceedings of 14th Dec. 1880. Weir, 172.

Rights of a Manager of a joint Hindu family. No co-parcener having before division a right in or to any specified share in any particular items of the family property, a prosecution for dishonest misappropriation cannot lie against the managing member of the family until accounts have been taken and the shares allotted.

Proceedings of 10th Nov. 1864. Weir, 174.

A woman has a joint possession of her husband's property and cannot therefore be indicted for disposing of it in any way.

CRIMINAL TRESPASS.

Reg. v. Jeenut Bebee, 1 S. W. R. Cr. R. 46.

The entry by one man on another's property accompanied by the cutting down of trees in that property, is criminal trespass.

Prankrishna Chundra in re, 6 B. L. R. Ap. 80; S. C. 15 S. W. R. Cr. R. 6.

Entrance of a member of a Hindu joint-family into the family dwelling house is not criminal trespass. The entry of a stranger into a family dwelling house with the permission and license of one of the members, is not criminal trespass.

Reg. v. Lukhun Doss 2 S. W. R. Cr. R. 52.

A prisoner who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under section 460 and not under sections 457 and 324 of the Penal Code.

Reg. v. Nundmohun Sircar, 12 S. W. R. Cr. R. 33.

Where A. goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass, by putting such person in fear of wrongful restraint under section 452 of the Penal Code.

Reg. v. Ootum Mal, 2 S. W. R. Cr. R. 2.

A Deputy Magistrate should adjudicate on charges of criminal trespass, unlawful assembly, and mischief instead of referring the case, under section 318 of the Criminal Procedure Code (Act XXV of 1861) to the Magistrate. A Deputy Magistrate vested with the powers of a Subordinate Magistrate of the second-class cannot institute proceedings under the said section.

Reg. v. Ram Dyal Mundle, 7 S. W. R. Cr. R. 28.

A person who forcibly enters upon property in the possession of another and erects a building thereon, or does any other act with intent to annoy the person, is guilty of criminal trespass within the meaning of section 441 of the Penal Code, without reference to the question in whom the title to the land may ultimately be found.

Reg. v. Shadry, 1 S. W. R. Cr. R. 34.

A Deputy Magistrate has no jurisdiction in the case of an offence coming under section 458 of the Penal Code.

Iswar Chandra Karmakar v. Sital Das Mitter, 8 B. L. R. App. 62; S. C. 17 S. W. R. Cr. R. 47.

An intention to intimidate, insult or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive but in actual possession of the premises.

Sibnarain Pal & others v. Ram Rutton Dutt & others, 3 S. W. R. Cr. R. 32.

A charge of trespass against persons in possession of land decreed to another, whether notice of the decree has been given to the alleged trespassers or not, is not necessarily "frivolous, vexatious, and false."

Pakhee Sing & Bojnauth Sing, 6 S. W. R., Cr. R. 70.

Where a charge was preferred before a Deputy Magistrate against certain persons, of having come armed with swords and with a large retinue and torches, and of having entered the complainant's house by night and carried off thence a large amount of property, the Deputy Magistrate on the evidence convicted the parties of house-trespass under section 448 of the Penal Code. The Sessions Judge thought that the offences charged, if proved, amounted to house-breaking by night or to some other offence within the jurisdiction of the Court of Sessions, and asked whether he could direct a commitment. Held that the Deputy Magistrate had neither convicted nor discharged any person of an offence not triable by him, that he had jurisdiction to try the offence charged, and that the sentence passed was within his competency.

Kalinath Nag Chowdhry in the case of 9 S. W. R., Cr. R. 1.

In order to convict of criminal trespass under section 441 of the Penal Code, it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence or to intimidate, insult or annoy any person in possession of the property."

Reg. v. Surwan Singh and others, 11 S. W. R., Cr. R. 11.

Held, by JACKSON, J. setting aside the order of the Magistrate, (MARKBY, J. dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under section 441 of the Penal Code, because the complainant did not make out his title to the land:—the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.

MARKBY, J.:—"In this case I am not prepared to say that the Magistrate was wrong in law in refusing to put the accused upon his trial on a criminal charge, and unless his decision be contrary to law, we have no power to interfere under section 434 (Act XXV of 1861) which is the provision under which this case comes before us. .....

"With regard to the offence of criminal trespass, I think the Magistrate was right, in the view which he took of the evidence, to abstain from committing the accused on that charge. I have already held, sitting with Mr. Justice Kemp, that, 'if one person forcibly enters upon property in the possession of another, and there does an act with intent to annoy (we ought to have said intimidate, insult, or annoy) the person in possession, he is guilty of the offence specified in section 441 without reference to the question in whom the title to the land may ultimately be found.' (1 Weekly Reporter, Criminal 2.) To that opinion I adhere, although I am aware that it involves a construction of the section which gives to the word 'trespass' an arbitrary meaning inconsistent with its ordinary use. But from the Magistrate having abstained from committing the prisoner on a charge of assault, or of being a member of an unlawful assembly, I infer that he disbelieved the evidence which tended to establish violence, and a man who enters upon land which is in the possession of another, but which in good faith he claims as his own, cannot, as I conceive, be considered guilty of criminal trespass, simply on the ground that he does that which, if his claim be well founded, he is as owner perfectly justified in doing,—such as cutting crops, ploughing up the land, and the like. Even if his claim be not well-founded, but the intention is merely to assert his right, and not to insult, intimidate, or annoy the person in possession he would not be guilty of the peculiar offence described in section 441. Upon the view, therefore, which, as far as I can gather, the Magistrate took of the facts of this case, I cannot say he was wrong in law in refusing to proceed with the charge and in referring the parties to the Civil Court."

Gamirullah Sarkar v. Abdul Sheikh 10 I. L. R. Calc. 408.

A person may be tried summarily for criminal trespass and mischief unless there is a *bonâ fide* claim of right depriving the Magistrate of jurisdiction.

Shakur Mahomed v. Chunder Mohun Sha (21 W. R., Cr. 38) disapproved.

Shumbhunath Sarkar v. Ram Kamal Guha, 13 C. L. R. 212.

A. built a hut on portion of certain disputed land to which he laid claim and was on the prosecution of another claimant to the land convicted of criminal trespass under section 441 of the Penal Code. Held, that the conviction was bad, as in the erecting the hut it was not the intention of the accused to annoy.

Per Curiam :—Loss or injury would naturally cause annoyance, but not the kind of annoyance contemplated by section 441 of the Penal Code. In a trial before a Bench originally constituted of a Stipendiary and two Honorary Magistrates, one of the latter after the commencement of the trial was absent, and important evidence was recorded in his absence. On the following day, he returned to the Bench and signed the final order convicting the accused. Held, that the conviction was bad on the ground of irregularity.

Reg. v. Chooramoni Saut, 14 S. W. R. Cr. R. 25.

It is essential to a conviction for criminal trespass under section 441 of the Penal Code that there should be the intent to commit an offence, or to intimidate, insult or annoy any person.

Gungaram Malee, petitioner, 18 S. W. R Cr. R. 14.

A charge of trespass involves an offence under the Penal Code which a Magistrate is bound to enquire into by taking evidence and deciding the case according to law.

Shibnath Banerjee, petitioner, 24 S. W. R, Cr. R 58.

To bring an act of trespass within the meaning of the Indian Penal Code, section 441, the entry upon the land must be with the intent to annoy, which means *with the purpose of annoying* the person in possession.

PHEAR, J. :—No doubt the trespass which is the subject of this conviction was in itself of such a character as to be calculated to annoy Mr. Stuart whenever he might come to find out that it had been committed; but in order to bring the act of trespass within section 441 of the Indian Penal Code, it must be committed with an actual intent to annoy. The entry upon the land must be, according to the express words of the section with the intent to annoy, which means, as we understand the words, with the purpose of annoying the person in possession of the property. It is very clear, however, from the facts found by the Magistrate that the accused person had no actual intent to annoy Mr Stuart, had no actual purpose of annoying or insulting him; he doubtless desired, if he could, to escape without his trespass ever coming to the knowledge of Mr. Stuart at all. We, therefore, think that the conviction is bad in law, and must be quashed and the sentence set aside."

Shistidhur Parni & others in re, 9 B L. R. App 19.

An act does not amount to criminal trespass under section 441 of the Penal Code, unless it was committed with an intention of committing some offence, or of intimidating, insulting or annoying some one. Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass.

Empress v. Charu Nayiah, 2 I L. R. Calc. 354

The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of criminal trespass in the Indian Penal Code.

Chunder Narain v. Farquharson, 4 I. L. R. Calc 837.

A. who had been warned off the lands of B. subsequently, having shot a deer near the boundary of B.'s land and the deer having run on to B.'s land, followed it on to such land for the purpose of killing it. Held, that his doing so was not a criminal trespass.

Jhumuk Noniah v. Shadashib Roy, 7 I. L. R. Calc. 26.

A. the servant of B. was convicted of criminal trespass in going upon the land of C. one of B.'s tenants, and preventing him from cutting his crops. B. was convicted of abetment of criminal trespass. A. and B. pleaded that they were acting in the exercise of the legal right of distraint. It appeared that no written demand under section 72 of the Rent Act (Beng. Act VIII of 1869) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been made, was served on C. and that no written authority under section 76 had been given by B. to A. Held, that it lay upon A. and B. to show that they had conformed to the provisions of the law, or at least had acted with the *bonâ fide* intention of distraining the complainant's crops; and that the conviction was right. Held also, that, as under section 74, standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator, A. had no right, even if he was acting *bonâ fide*, to restrain C. from cutting his crops.

Muthra v. Jawahir and others, 1 I. L. R. All. 527

A person plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in section 441 of the Indian Penal Code.

Empress v Lalai, 2 I. L. R. All. 301.

Per STUART, C. J. and OLDFIELD, J. (STUART, C. J. doubting) that a havalat (lock-up) is a prison within the meaning of the Prisons' Act.

Per STUART, C. J.:—that food is not an "article" within the meaning of section 45 of that Act.

Per STUART, C. J. and OLDFIELD, J.:—that the conveyance of food into a havalat, not being expressly prohibited by the rules made by the Local Government under section 54 of that Act for the management and discipline of prisons, is not "contrary to the regulations of the prisons" within the meaning of section 45 of that Act, and is therefore not an offence punishable under that section.

Held therefore, *per* STUART, C. J. and OLDFIELD, J.:—that where a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of section 442 of the Indian Penal Code, and it was not an act punishable under section 45 of the Prisons' Act.

Per SPANKIE, J. *contra.*

Per STUART, C. J.:—that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under section 45 of the Prisons' Act.

Empress v. Budh Singh, 2 I. L. R. All. 101.

If a person enters on land in the possession of another in the exercise of a *bonâ fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass.

So also, if a person deals injuriously with property in the *bonâ fide* belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, held that such person could not, under clause 3 of section 454 of Act X of 1872 receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.

Gobind Prasad and another in re 2 I. L. R. All. 465.

Certain immoveable property was the joint undivided property of C. G. and a certain other person. R. obtained a decree against G. for the possession of such property, and such property was delivered to him in the execution of that decree in accordance with the provisions of section 264 of Act X of 1877. C. in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy R. or to commit an offence, and G. in like manner, with the like intention of asserting the right of his co-owners, remained on such property. Held that, under such circumstances, they could not be convicted of criminal trespass.

Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another, for the purpose of asserting rights he may have solely or jointly with other persons, is not criminal trespass unless the intent to commit an offence or to intimidate, insult or annoy is conclusively proved.

Reg. v. Seith Roshun Lall, 2 N. W. P. Rep. All. 82.

Where the trespass (if any) was not committed with the intent to commit an offence, or intimidate, insult, or annoy the persons in possession, but in the *bonâ fide* assertion of a claim of title, this does not amount to criminal trespass. When complainant applies to be restored to possession under section 318 Criminal Procedure Code (Act XXV of 1861) the question of possession will require determination.

Reg. v. Dullee, 6 N. W. P. Rep. All. 307.

The Court inclined to hold that a cattle-yard which was originally walled on four sides, and in one side of which, fallen out of repair, there was a gap stopped with a thorn, was a building used as a place for the custody of property, within the meaning of section 442 of the Indian Penal Code.

Khaja Mahomed Hamin Khan and another in re. 3 I. L. R. Mad. 178. S. C. Weir, 202.

A. B. C. and D. were co-owners of a plot of land in which they were accustomed to bury their dead; A. and B. opened a saw-pit close to the graves of D.'s relatives but did not disturb any of the graves. Held, that they were wrongly convicted under section 297 of the Indian Penal Code.

Reg. v. Marimuttu, 4 I. L. R. Mad. 243.

Excommunication from caste *per se* does not deprive a Hindu wife, of her right of joint enjoyment of her husband's house, so as to make her a trespasser if she enters the house to claim maintenance.

Reg. v. Varthappa Nayakan, 5 I. L. R. Mad. 382.

Entry of a Local Fund market with intent to evade payment of market dues is not a criminal trespass.

Proceedings of 15th Nov. 1869, 5 Mad. Rep. Rul. 5.

The accused was found in the complainant's house by night, but he stated that he was there for the purpose of carrying on an intrigue with the complainant's wife. The complainant refused to lay a complaint of house-trespass with intent to commit adultery. Held, that the Magistrate was right in refusing to convict of a charge which the husband refused to make.

Proceedings of 15th Feb. 1870, 5 Mad. Rep. Rul. 17.

The defendant was convicted under section 447 of the Penal Code for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction.

Proceedings of 28th Oct. 1870. 5 Mad. Rep. Rul. 38.

The accused were convicted of criminal trespass under section 443 of the Indian Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. Held, that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.

Proceedings of 10th February 1871. 6 Mad. Rep. Rul. 19.

Accused was Ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienee. The accused entered on this land. Held, that he had not committed the offence of criminal trespass.

Proceedings of 28th March 1871. 6 Mad. Rep. Rul 25.

Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground. Held, that the conviction was right. The person (corporate) in possession of the burial-ground is the portion of the public entitled to use the burial-ground and the act of ploughing up the burial-ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use.

Proceedings of 25th May 1871. 6 Mad. Rep. Rul 26.

Defendant was convicted of criminal trespass for including in his own land a portion of a public foot-path. Held, that as the public generally were entitled to the use of the foot-path, there was no illegal entry by the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted.

Proceedings of 15th Oct. 1879. Weir, 201.

Where the accused had been convicted of attempting to steal fish from a tank belonging to a temple, and on appeal the conviction was set aside on the ground that the fish were not in the possession of the owner of the tank and a conviction of criminal trespass was substituted. Held, that the conviction of the latter offence was illegal, the existence of any of the intents required by section 441 being inconsistent with the finding and the circumstances of the case.

Proceedings of 25th Oct. 1879. Weir, 202.

Fishing in a tank to which the public generally have access, held not to amount to criminal trespass.

Arunachala Achari, petitioner. Weir, 203.

The existence of a *bonâ fide* claim of right is not irrebuttable evidence of the absence of a criminal intent. An entry with the intention of causing wrongful restraint is sufficient to support a conviction. (S. 447, I. P. C.)

Revision Case, No. 107 of 1881. Weir, 204.

An entry by a wife who had been excommunicated from caste for alleged misconduct into her husband's house for the purpose of demanding maintenance does not constitute criminal trespass. The law does not recognize the loss of social status arising from excommunication from caste as of itself depriving a wife to the right of a joint enjoyment of her husband's property.

Erabasava Talari, accused. Weir, 205.

An encroachment on Government land by building a pyal thereon held not to constitute criminal trespass on the ground that there was no intent to commit an offence to intimidate, insult or annoy.

Groves, Appellant. Weir, 206.

An entry by an owner upon lands, permissively used or occupied by, but not in the possession of another, does not amount to criminal trespass.

Proceedings of 1st June, 1868. Weir, 206.

Entry into a house with the object of committing adultery will constitute the offence under section 451, adultery being an offence although the husband alone can prosecute.

Samban, accused. Weir, 209.

To sustain a conviction under the section, it is not necessary to decide which of several specific offences the accused intended to commit. It is sufficient if the evidence leaves no room for reasonable doubt that the accused intended to commit an offence.

CULPABLE HOMICIDE.

Reg. v. Baboolun Hijrah, 5 S. W. R. Cr. R. 7.

When a man of full age (*i. e.*, above 18 years) submits himself to emasculation performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.

Reg. v. Fukeera Chamar, 6 S. W. R. Cr. R. 50.

Where a thief was caught house-breaking by night, with half his body and his head through the wall of a house occupied by none but women, except the prisoner and his young idiot son, and where the prisoner suddenly caught up a sort of pole-axe, and with it struck the thief five times on his neck, and nearly cut off his head.

Held, that the offence committed by the prisoner was not murder, in as much as it was committed in the exercise of the right of private defence; but that as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder.

Reg. v. Fuzza Meah alias Fuzzah Mahomed, 6 S. W. R. Cr. R. 89.

In a case of culpable homicide not amounting to murder, it was held that though the occasion might have been one in which the prisoner was justified in meeting force by force, still, as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to clause 4, section 99 of the Penal Code.

Reg. v. Hurigiri, 1 B. L. R. A. C. 11; S. C. 10 S. W. R. Cr. 26.

Culpable Homicide, though committed under provocation will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.

Reg. v. Hurrydass Paul & others, 6 S. W. R. Cr. R. 86.

Explanation of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.

Reg. v. Kassee Moddeen & others, 4 S. W. R Cr. R. 38.

Intriguing with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder against the brothers who finding the deceased lying with their sister in the same bed ill-treated him, from the effects of which ill-treatment he died.

Reg. v. Khedun Misser, 7 S. W. R. Cr. R. 54.

Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death, or such bodily injury as was likely to cause death, is punishable under section 304 of the Penal Code as culpable homicide not amounting to murder.

Reg. v. Maura Singh & others, 7 S. W. R. Cr. R. 103.

In a case of riot in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.

Reg. v. Punai Fattama, 3 B. L. R. Cr. 25, S. C. 12 S. W. R. Cr. R. 7.

Certain snake-charmers by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite three of these persons died. Held, that the offence was murder under clauses 2 and 3 of section 300 of the Penal Code, unless it could be brought within the 5th Exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder.

Reg. v. Rajoo Ghose & others, 7 S. W. R. Cr. R. 106.

Where a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindicativeness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death, but if done without premeditation, in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder.

Reg. v. Ram Ruchea Singh, 4 S. W. R. Cr. R. 29.

When the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.

Reg. v. Ramtahal Kahar, 3 B. L. R. A. Cr. 33.

The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down

from the roof, and struck deceased with his sword in several places, from the effects of which he died.

Held, that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.

Reg. v. Rubbeeoollah, 7 S. W. R. Cr. R. 13.

The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former,) the conviction and sentence for the second offence were quashed.

Reg. v. Sheikh Boodhoo, 8 S. W. R. Cr. R. 38.

Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that maddened at the sight, he killed both her and her paramour.

Held, that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity.

Reg. v. Soumber Gwala, 4 S. W. R. Cr. R. 32.

The Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding and a new trial ordered.

Reg. v. Suleem Sheikh, 1 S. W. R. Cr. R. 23.

The prisoner, having struck the deceased a hasty but fatal blow with a stick in his hand at the time, for abusing his mother, was held guilty of culpable homicide not amounting to murder, and not of murder.

Reg. v. Maithya Gazee & another, 6 S. W. R. Cr. R. 42.

Where a man was murdered by his brother and nephew while in the act of dishonouring the brother's wife,—Held, that there was grave and sudden provocation, within the meaning of exception section 300 of the Penal Code, which would have justified the murder if only such force had been used as was necessary to protect the wife from the outrage to which she was being subjected; but that, as the deceased had been beaten in a cruel and vindictive manner, the prisoners were guilty of culpable homicide not amounting to murder.

Empress v. Ketabdi Mundul, 4 I. L. R. Calc. 764; S. C. 2 C. L. R. 507.

Section 304 A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take

the character of rashness because its consequences have been unfortunate. Acts probably or possibly, involving danger to others, but which in themselves are not offences, may be offences under sections 336, 337, 338 or 304 A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender and placed in their appropriate place in the class of offences of the same character. Nidamarti Nagabhushanam (7 Mad. H. C. R., 119) cited and approved.

Empress v. Safatulla & another, 4 I. L. R. Calc. 815.

Where the accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased. Held, that it was not sufficient, in order to find the accused guilty of a rash act under section 304 A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.

Empress v. Gonesh Doobey & another, 5 I. L. R. Calc. 351 S. C. 4 C. L. R. 580.

A snake-charmer exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators; the spectator tried to push off the snake, was bitten, and died in consequence. Held, the snake-charmer was guilty, under section 304 of the Penal Code, of culpable homicide not amounting to murder, and not merely of causing death by negligence, an offence punishable under section 304 A, Reg. *v.* Punai Fattemah (12 S. W. R. Cr. R. 7) distinguished.

Empress v. Rohimuddin, & others, 5 I. L. R. Calc. 31; S. C. 4 C. L. R. 285.

Exception 5 to section 300 refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death, or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. *Per* BROUGHTON, J.:—Exception 5 to section 300 is not applicable to the case of a premeditated fight, but points to a case of a different character, such as suttee.

Samshere Khan & others v. The Empress, 6 I. L. R. Calc. 154; S.C.7C.L.R.158.

Where death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other

during the fight, the offence committed is culpable homicide, but does not amount to murder.

Gopinath Shaha & another in re, 1 C. L. R. 141.

Where death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session, on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt is contrary to law.

Boya Munigadu v. The Queen, 3 I. L. R. Mad. 33.

On a certain evening M. a common workman, saw N. committing adultery with his (M.'s) wife, and on the following morning, while labouring under the excitement provoked by their misconduct, came upon them eating food together while his wife had neglected to provide food for M. M. took up a bill-hook and killed N. on the spot. Held, that if M. connected the subsequent conduct of N. and his wife with their misconduct of the preceding evening and regarded it as implying an open avowal of their criminal relations, which under the circumstances he might have done, the provocation was sufficiently grave and sudden to deprive him of self-control and to reduce the offence from murder to culpable homicide not amounting to murder.

Empress v. Banni, 2 I. L. R. All. 349.

Where a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, held that she could not be convicted and punished under section 304 and also under section 317 of the Indian Penal Code, but under section 304 only.

Empress v. Fox, 2 I. L. R. All. 522.

Where a person hurt another, who was suffering from spleen disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person, held that he was properly convicted under section 323 of the Indian Penal Code of voluntarily causing hurt.

Empress v. O'Brien, 2 I. L. R. All. 766.

B. voluntarily caused hurt to N. who was suffering from spleen disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N. from which he died. Held, that B. ought not to be convicted under section 304 A. of the Indian Penal Code of causing death by negligence, but under section 325 of that Code of voluntarily causing grievous hurt.

Reg. v. Aman & Nund Kishore, 5 N. W. P. Rep. All. 130.

The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a police constable and the lumberdar of a village for the capture of an outlaw, for whose arrest a reward had been offered, and in pursuance thereof, killed him, while endeavouring to

escape. Held, that the offence committed came under the third exception in section 300 of the Indian Penal Code, and was culpable homicide, not amounting to murder.

Reg. v. Man and others, 5 N. W. P. Rep. All. 235.

The prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased, and several of his ribs were broken. Held, that section 304 A. of the Indian Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under section 304.

Reg. v. Girdharee Singh, 6 N. W. P. Rep All. 26.

The knowledge that an act is likely to cause death does not constitute culpable homicide not amounting to murder. It must be shown that the act was committed with the knowledge that it must in all probability cause death.

Reg. v. Yasin Sheikh, 4 B. L. R., A. Cr. 6; S. C. 12 S. W. R. Cr. R. 68.

Culpable homicide not amounting to murder is where a man kills another, being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder.

Reg. v. Akal Mahomed, 3 S. W. R. Cr. R. 18.

What is necessary to bring a case of murder under the 4th Exception to section 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to murder.

Reg. v. Sheikh Bazu & others, 8 S. W. R. Cr. R. 47; S. C. B. L. R. Sup. Vol. 750 F. B.

Culpable homicide is not murder, unless the case comes expressly within the provisions of clauses 1, 2, 3, or 4 of section 300 of the Penal Code. Under section 299 an offence may amount only to culpable homicide not murder, although none of the Exceptions specified in section 300 are applicable to the case.

Magenee Behara, case of, 11 S. W. R. Cr. R. 3.

Certain persons whom the accused, a ferryman, was rowing across a river, were drowned by the sinking of a boat. Held, on the facts of this case, that the accused could not be convicted of culpable homicide not amounting to murder, as there was nothing to show that he acted with the knowledge that he was likely by such act to cause death within the terms of section 299 of the Penal Code. The prisoner was convicted under section 282 of that Code, of negligently conveying persons by water for hire in a vessel overloaded or unsafe.

Reg. v. Mokee, 12 S. W. R. Cr. R. 15.

Where the accused, whose property had frequently been stolen, went out with a lattee to watch his property, and with the lattee struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th Exception to section 99, and that the prison-

er was not guilty of culpable homicide not amounting to murder, but was protected by sections 97 and 104 of the Penal Code and had not exceeded the legal right of private defence of property.

Mussamut Anhuchia Dosadin v. Mussamut Anoop Koonwar Thakooranee, 18 S. W. R. Cr. R. 23.

Where an old woman of 70 so beat a lad of 18 as to the cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement such as a mother would inflict on a disobedient child, and convicted the accused under section 304 A. of the Penal Code. Held, that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under section 304.

Reg. v. Harish Pal, 20 S. W. R. Cr. R. 63.

In a case in which the accused caused the death of a woman by beating, the medical officer who held the *post mortem* examination considered that death resulted from rupture of the spleen, but the Civil Surgeon said that no opinion of the cause of death could be formed. The accused having been convicted of causing grievous hurt, and sentenced to six months' rigorous imprisonment by the Deputy Magistrate, the Magistrate considered that the accused ought to have been committed to the Sessions on a charge of culpable homicide, but recommended that the High Court should enhance the sentence which had been passed to one of sufficient severity to meet the offence :—Held, that the High Court could not deal with the case in the mode suggested, but under section 297, Code of Criminal Procedure (Act X of 1872) the Court annulled the conviction by the Deputy Magistrate and directed that the accused should be committed to the Sessions on charges of culpable homicide and of grievous hurt.

Nidamarti Nagabhushanam, prisoner, 7 Mad. Rep. 119.

Prisoner killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. Held, that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was, whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. Held, that the section was wholly inapplicable. "Culpable rashness" and "culpable negligence" distinguished.

Govt. v. Kalika Misser, 1 N. W. P. Rep. (Agra) 3.

Held, that where the Judge convicts on the charge of culpable homicide not amounting to murder, he should record under which of the Exceptions in section 300 of the Indian Penal Code the case falls. Held also, that this Court was precluded under section 426, Act XXV of 1861, from altering or reversing the sentence passed by the Sessions Court on account of error of procedure, when the prisoner was not substantially prejudiced by such errors; and has not been sentenced to a more severe punishment than is awardable for the offence of which he ought properly to have been convicted.

Several important distinctions pointed out between murder and culpable homicide.

Reg. v. Gora Chand Gopee & others, 5 S. W. R. Cr. R. 45; S. C. B. L. R. Sup. Vol. 443.

PEACOCK, C. J. (TREVOR and NORMAN, JJ. concurring) :—"There are, in my opinion, several important distinctions between murder and culpable homicide. An offence cannot amount to murder unless it falls within the definition of culpable homicide; for section 300 merely points out the cases in which "culpable homicide is murder." But any offence may amount to culpable homicide without amounting to murder. Culpable homicide is not murder if the case falls within any of the Exceptions mentioned in section 300.

The causing of death by doing an act with the intention of causing death is culpable homicide. It is also murder, unless the case falls within one of the Exceptions in section 300. Causing death with the intention of causing bodily injury to any person, if the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, in my opinion, falls within the words of section 299 "with the intention of causing such bodily injury as is likely to cause death," and is culpable homicide. It is also murder, unless the case falls within one of the Exceptions in section 300, clause 3. Causing death by doing an act with the knowledge that such act is likely to cause death is culpable homicide, but it is not murder even if it does not fall within any of the Exceptions mentioned in section 300, unless it falls within clauses 2, 3, or 4 of section 300, that is to say, unless the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or with the intention of causing bodily injury to any person; and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or unless the person committing the act knows that it is so imminently dangerous that it must in all probability, cause death, or such bodily injury as is likely to cause death. In speaking of acts, I of course include illegal omissions. There are many cases falling within the words of section 299 "or with the knowledge that he is likely by such act to cause death" that do not fall within the 2nd, 3rd, or 4th clauses of section 300, such for instance, as the offences described in sections 279, 280, 281, 282, 284, 285, 286, 287, 288, and 289, if the offender knows that his act or illegal omission is likely to cause death, and if in fact it does cause death. But although he may know that the act or illegal omission is so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender knows that it must in all probability cause death, or such bodily injury as is likely to cause death, or unless he intends thereby to cause death or such bodily injury as is described in clauses 2 or 3 of section 300.

As an illustration, suppose a gentleman should drive a buggy in a rash and negligent manner, or furiously along a narrow crowded street. He might know that he was likely to kill some person, but he might not intend to kill any one. In such a case, if he should cause death, I apprehend he would be guilty of culpable homicide not amounting to murder, unless it should be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, &c. as to bring the case within the 4th clause of section 300. In an ordi-

nary case of furious driving, the facts would scarcely warrant such a finding. If found guilty of culpable homicide not amounting to murder, the offender might be punished to the extent of transportation for ten years or imprisonment for ten years with fine (see sections 304 and 59); or if a European or American, he would be subject to penal servitude instead of transportation. It would not be right in such a case that the offender should be liable to capital punishment for murder. The first part of section 304 would not apply to the case. That applies only to cases which would be murder if not falling within one of the Exceptions in section 300. If a man should drive a buggy furiously, not merely along a crowded street, but intentionally into the midst of a crowd of persons, it would probably be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, &c. as in clause 4, section 300.

From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the circumstances of the case justify such a presumption; but I should never presume an intention to cause death merely from the fact of furious driving in a crowded street in which the driver might know that his act would be likely to cause death. Presumption of intention must depend upon the facts of each particular case.

Suppose a gentleman should cause death by furiously driving up to a Railway Station. Suppose it should be proved that he had business in a distant part of the country, say at the opposite terminus; that he was intending to go by a particular train; and that he could not arrive at his destination in time for his business by any other train; that at the time of the furious driving it wanted only two minutes to the time of the train's starting; that the road was so crowded that he must have known that he was likely to run over some one and to cause death. Would any one under the circumstances presume that his intention was to cause death? Would it not be more reasonable to presume that his intention was to save the train? If the Judge or jury should find that his intention was to save the train, but that he must have known that he was likely to cause death, he would be guilty of culpable homicide not amounting to murder, unless they should also find that the risk of causing of death was such that he must have known and did know that his act must in all probability cause death &c. within the meaning of clause 4, section 300.

If they should go further, and infer from the knowledge that he was likely to cause death, that he intended to cause death, he would be guilty of murder, and liable to capital punishment."

Reg. v. Govinda, 1 I. L. R. Bom. 342.

Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards. Held, that there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder.

MELVILL, J.:—I understand that these proceedings have been referred to me under section 271 B. of the Code of Criminal Procedure (Act X of

1872), in order that I may decide whether the offence committed by the prisoner was murder, or culpable homicide not amounting to murder. For convenience of comparison, the provisions of sections 299 and 300 of the Indian Penal Code may be stated thus :—

Section 299.	Section 300.
A person commits culpable homicide, if the act by which the death is caused is done.	Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done.
(A) With the intention of causing death;	(1) With the intention of causing death;
(B) With the intention of causing such bodily injury as is *likely* to cause death.	(2) With the intention of causing such bodily injury as the offender *knows to be likely* to cause the death of *the person* to *whom the harm is caused;*
	(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature* to cause death;
(C) With the knowledge that * * * the act is *likely* to cause death.	(4) With the knowledge that the act is so *imminently dangerous that it must in all probability cause death,* or such bodily injury as is likely to cause death.

I have underlined the words which appear to me to mark the differences between the two offences.

(A) and (1) show that where there is an intention to kill, the offence is always murder.

(C) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. The essence of (2) appears to me to be found in the words which I have underlined. The offence is murder, if the offender *knows* that the *particular person injured* is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. The illustration given in the section is the following:—A. knowing that Z. is labouring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z. dies in consequence of the blow. A. is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health."

There remain to be considered (*b*) and (3), and it is on a comparison of these two clauses that the decision of doubtful cases like the present must generally depend. The offence is culpable homicide; if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. The distinction is fine, but appreciable. It is much the same distinction as that between (C) and (4), already noticed. It is a question of degree of probability. Practically, I think, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

In the present case the prisoner, a young man of 18, appears to have kicked his wife (a girl of 15) and to have struck her several times with his fist on the back. These blows seem to have caused her no serious injury. She, however, fell on the ground, and I think that the evidence shows that the prisoner then put one knee on her chest, and struck her two or three times on the face. One or two of these blows, which, from the medical evidence, I believe to have been violent and to have been delivered with the closed fist, took effect on the girl's left eye, producing contusion and discoloration. The skull was not fractured, but the blow caused an extravasation of blood on the brain, and the girl died in consequence either on the spot, or very shortly afterwards. On this state of facts, the Sessions Judge and the assessors have found the prisoner guilty of murder, and he has been sentenced to death.

I am myself of opinion that the offence is culpable homicide, and not murder. I do not think there was an intention to cause death; nor do I think that the bodily injury was sufficient in the ordinary course of nature to cause death. Ordinarily, I think, it would not cause death. But a violent blow in the eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing concussion or extravasation of blood on the surface or in the substance of the brain. A reference to Taylor's Medical Jurisprudence (Fourth Edition, page 294) will show how easily life may be destroyed by a blow on the head producing extravasation of blood.

For these reasons I am of opinion that the prisoner should be convicted of culpable homicide not amounting to murder, and I would sentence him to transportation for seven years.

This order was accordingly passed by the Court.

Midde Venkappa, Appellant, Weir, 107.

Where death was caused by a blow with a heavy stick and there was reason to think that the accused knew no more than that the blow was possibly dangerous to life: Held, that the conviction should be of culpable homicide not amounting to murder.

Theyagarayan accused. Weir, 111.

Where death was caused by an act done while in a state of intoxication, voluntarily induced, and the accused was convicted of causing grievous hurt, it was held that the accused should have been charged with culpable homicide not amounting to murder.

Taturi Jamaliah, prisoner. Weir, 114.

Where death was caused by an act presumably committed partly under the influence of apprehension from a severe beating from which accused just escaped, and partly under the influence of the provocation caused by the beating: Held, that the conviction should have been of culpable homicide not amounting to murder.

CUSTODY OF MINOR.

Koolsum Bibee v. Sheikh Edoo, 25 S. W. R. Cr. R. 35.

A father having applied to a Criminal Court for the custody of his child, who was eleven years old and had always lived with the mother, and the Court having caused the child to be delivered up to the father, Held, that the Court was in the wrong, the question being one that ought to be decided in the Civil Court.

DACOITY.

Reg. v. Abool Hossein, 1 S. W. R. Cr. 48.

When stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, *e. g.*, length of time or distance.

Reg. v. Bhojah and others, 6 S. W. R. Cr. R. 54.

A sentence of fine only is illegal in a case of dacoity.

Reg. v. Bissonath Mundle and others, 2 S. W. R. Cr. 58.

The Sessions Judge should record under what section and on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant.

Reg. v. Cassy Mul and another, 3 S. W. R. Cr. 10.

When persons are found within six hours of the commission of a dacoity, with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.

Reg. v. Kamal Fukeer, 17 S. W. R. Cr. R 51.

Merely being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen.

To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence

under section 150 of the Code of Criminal Procedure (Act XXV of 1861), it must be shown that the admission was antecedent to the discovery of the money.

Reg. v. Khooda Sonthal and others, 6 S. W. R. Cr. R. 9.

Severe sentence of transportation for life in a case of aggravated dacoity confirmed, as required by the state of the district. The grounds of commitment and the remarks of the committing officer should be entered or copied in the Calendar, which ought to be complete in itself.

Reg. v. Khoyrat Ally Beg, 3 S. W. R. Cr. R. 60.

The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law.

Reg. v. Kissoree Pater & others, 7 S. W. R. Cr. R. 35.

When a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the perview of section 395 of the Penal Code. It is sufficient, for the application of the section, that the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint.

Reg. v. Koonee, 7 S. W. R. Cr. R. 48.

Section 511 of the Indian Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under section 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "sections 397 and 511" and substituting "section 395."

Reg. v. Modhoo Manjee, 5 S. W. R. Cr. R. 51.

Nature of evidence requisite to be taken in a case of dacoity.

Reg. v. Motee Jolaha, 5 S. W. R. Cr. R. 66.

When a prisoner is apprehended eight days after the commission of a dacoity with part of the plunder in his possession, there is a good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.

Reg. v. Ramchand Punjah, 6 S. W. R. Cr. R. 88.

In a case of dacoity a sentence of 14 years' transportation was held illegal, and reduced to 10 years' transportation under section 395 of the Penal Code.

Reg. v. Ram Sagor and others, 8 S. W. R. Cr. R. 57.

The evidence of an approver for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found, was held insufficient, under the circumstances of this case,

where the best witnesses were not examined to support conviction of the prisoners on a charge of dacoity.

Reg. v. Roopa, 2 S. W. R. Cr. R. 49.

Case of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government he was arrested, and after conviction, was sentenced to transportation for life.

Shumbhoo Roy v. Ajail Aheer & others, 6 S. W. R. Cr. R. 49.

A Deputy Magistrate has no jurisdiction to try and convict, as for theft, persons whose offence is in reality that of dacoity. He can only commit them to the Sessions.

Reg. v. Shahabut Sheikh & others, 13 S. W. R. Cr. R. 42.

A person convicted of dacoity under section 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under section 411, or of receiving property transferred by commission of dacoity under section 412 when there is no evidence of the commission of more than one offence. The practice of dividing the facts which constitute parts of one offence into several minor offences condemned.

Reg. v. Mooktaram Sirdar, 23 S. W. R. Cr. R. 18.

It is necessary, in order to establish a charge under section 400, Penal Code, that the prosecution should make out that there existed at the time specified a gang of persons associated together for the purpose of habitually committing dacoity, and that the accused was one of the gang.

Reg. v. Salamut Ali & others, 23 S. W. R. Cr. R. 59.

A prisoner charged with dacoity and riot and acquitted cannot be convicted of house-trespass, if the latter charge was not read out or explained to him and he was not called on to plead to it.

Reg. v. Lakhya Govind and another, 1 I. L. R. Bom. 50.

Where a dacoity was committed at Velanpor, a village in the territory of H. H. the Gáyakwád, and a part of the stolen property found where it had been concealed by the accused in British Territory, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor, although had Velanpor been in British Territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one, so as to give jurisdiction under section 67 of the Code of Criminal Procedure (Act X of 1872) in each district into which the property was conveyed. But on a conviction of retaining stolen property the sentences awarded could, it was held, be sustained, the retaining having taken place in British Territory.

Karaka Nachiar alias Vellia Nachiar Exparte, 3 Mad. Rep. 254.

On an application to the High Court, as a Court of revision, to discharge an order made by a Sessions Judge, under section 435, Criminal Procedure Code (Act XXV of 1861) for the committal of certain accused persons for trial on a charge of dacoity;—Held that, as all that was done under a claim of right in good faith entertained by the accused, however erroneously, the charge could not be sustained. The order of the Sessions Judge annulled.

Reg. v. Ruchee Ahen, 2 S. W. R. Cr. R. 39.

When murder is committed in the commission of dacoity, every one of the persons concerned in the dacoity is liable to be punished with death.

Reg. v. Bonomally Ghose and others, S. W. R. 1864, Cr. R. 8.

In a case of dacoity the Judge should direct the jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor.

Bhyrub Seal and Koobeer Chung, Appellants, S. W. R. 1864, Cr. R. 27.

A person convicted of, and sentenced for dacoity, cannot also be convicted of, and sentenced for receiving or retaining the stolen property thereby acquired. (LOCK, J. dissenting.)

Reg. v. Rughoo & others, S. W. R. 1864. Cr. R. 30.

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under section 396 of the Penal Code, but he cannot be separately convicted of murder under section 302, and of committing dacoity under section 395.

Muthirulappan and another, Appellants. Weir, 169.

Form of charge and conviction in case of offences under section 396, Indian Penal Code.

DEFACING DOCUMENTS PURPORTING TO BE A VALUABLE SECURITY.

Reg. v. Nittar Mundle, 3 S. W. R. Cr. R. 38.

The tearing up of a pottah is the destruction of a valuable security within the meaning of section 477 of the Penal Code.

DEFAMATION.

Rajnarain Sein in re, 6 B. L. R. Ap. 42; S.C. 14 S. W. R. Cr. R. 22.

The accused, an inspector of police, was sent to enquire if it was true that one Brojonauth was a leader of dacoits. He reported that it was false, and that the Banias of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under section 499 of the Penal Code supported under the circumstances of the case.

PHEAR, J.:—"If there were no other grounds wherewith to support a commitment than those which have been set forth by the Judge, we should think it exceedingly difficult to say that a commitment would be a good exercise of the discretion which the Legislature has reposed in the Sessions Court under section 435, Criminal Procedure Code. For if we look at the report which is said to be defamatory, it certainly has been made by an officer in execution of his duty; in truth, made directly as a result of an order from his superior; and, notwithstanding that the accusations or imputations against the Bania women are sweeping, it does not, as I think, appear from the document itself that they were made recklessly or unjustifiably; so that if there were no further evidence appearing in the case of the prosecution than the document itself, I think the accused would be covered by the 9th Exception to section 499 of the Indian Penal Code. He would appear to be almost precisely the subject of illustration (B) to that section. But we have had some other portion of the evidence read to us, to which the Judge made no reference, and from that it certainly does seem to us that there are materials on which the accused may well enough be sent to trial on the charge for which the Sessions Judge commits him. We cannot therefore interfere with his commitment, and we accordingly reject this petition."

Assaruddee Khan v. Baboo Khan, 1 S. W. R. Cr. R. 6.

Case of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the offence (*viz.*, that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such a case.

Sealy v. Ramnarain Bose, 4 S. W. R. Cr. R. 22.

Act XVIII of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to Mofussil Courts. Section 27 of that Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of Exception 9, section 499 of the Penal Code, he must show that he has exercised due care and attention.

Reg. v. Hemchunder Mookerjee, 1 S. W. R. Cr. R. 24.

A simple assertion (nowhere disproved) regarding the way in which a Serishtadar had issued perwannahs in an arbitration suit, does not amount to defamation.

Reg. v. Kally Doss Mitter, 5 S. W. R. Cr. R 44.

In a case of defamation, proof of despatch by post to a certain district of the paper containing the defamatory matter is tantamount to proof of publication thereof in that district.

Reg. v. Mohunt Parsoram Doss, 2 S. W. R. Cr. R. 36.

The Penal Code makes no distinction between written and spoken defamation.

Reg. v. Nobin Dome, 2 S. W. R. Cr. R. 35.

A false accusation not made in good faith renders the party making it liable to be charged with defamation. The fact that the complainant is a man of low caste, will not debar him from prosecuting for defamation on his being falsely charged with theft.

Reg. v. Pursoram Doss, 3 S. W. R. Cr. R. 45.

A person using defamatory expressions for the protection of his son's interests, is not privileged unless the imputation is made in good faith, *i. e.*, with due care and attention.

Greene v. Delanney 14 S. W. R. Cr. R. 27.

The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of section 499 of the Penal Code.

The criminal law of this country with regard to defamation depends on the construction of section 499 of the Penal Code, and not on what may be the English law on the same subject.

Shibo Prosad Pandah in re, 4 I. L. R. Calc. 124, 3 C. L. R. 122.

In dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason after due care and attention to believe that such allegations were true.

Empress v. McLeod 3 I. L. R. All. 342.

M. a medical man, and editor of a medical journal published monthly, said in such journal of an advertisement published by H. another medical man, in which H. solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed. "The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find that the line he has elected to adopt has not met with the approval of his brother officer serving in the same province, and we have no hesitation in pronouncing his proceedings in this matter unprofessional." Held that, in as much as such advertisement had the effect of making such hospital a "public question," and of submitting it to the judgment of the public," and M. had expressed himself in good faith, M. was within the third and sixth Exceptions respectively, to section 499 of the Penal Code. Held also, that M. came within the ninth Exception to that section.

The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is a publication of such defamatory matter at Allahabad. The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not.

Empress v. Ramanand, 3 I. L. R. All. 664.

C. was put out of caste by a panchayat of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated a letter to the members of their caste generally in which, stating that C. and such woman had been put out of caste, and the reason for the same, and requesting members of the caste not to receive them into their houses or to eat with them, they made certain statements applying equally to C. or such woman. Such statements were defamatory within the meaning of section 499 of the Indian Penal Code. Held that, if such persons were careless enough to use language which was applicable to C. they did so at their peril, and they could not escape the responsibility of having defamed C. by saying that they intended such language to apply to such woman. Held also, on the question whether such persons had acted in good faith, that, looking to the character of such letter, the circumstances under which it was written, and to the fact that C. had been put out of caste for the reason alleged, had such persons contented themselves, with announcing the determination of the panchayat and the grounds upon which such determination was based, they would have been protected but, inasmuch as they did not so content themselves, but went further and made false and uncalled for statements regarding C. they had rightly been held not to have acted in good faith.

Reg. v. Chrestien, 2 N. W. P. Rep. All. 473.

A pleader or mooktear relying upon the statements of his client, and in good faith, introducing into a pleading a defamatory averment will be protected from liability for defamation by the 9th Exception to section 500 of the Indian Penal Code ; but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith.

Reg. v. Thakur Dass, 6 N. W. P. Rep. All. 86.

To sustain a charge of defamation it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged ; it is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant.

Reg. v. Sankara, 6 I. L. R. Mad. 381.

N. having attended a Hindu widow-marriage (legalized by Act XV of 1856) S. his guru, or spiritual superior, published a notice declaring N. to be an outcaste, and forbidding the disciples of S. and the public of the town in which N. lived, to associate with N. until he submitted to the prescribed penance and obtained a certificate of purification from S.

S. also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S., N. was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N. charged S. with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation : Held, that the first two charges were unfounded, but that S. by communication by a registered post-card to N. was guilty of defamation.

Imperatrix v. Kakde, 4 I. L. R. Bom. 298.

The accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred:—"Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?"

The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge. Held that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith; or for the public good.

Proceedings of 20th Dec. 1871, 6 Mad. Rep. Rul. 47.

The Gumastah of a Guru or Priest, was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one and treated him with disrespect. Held, that the letter contained no expressions defamatory *per se*. If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged, and, if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation.

Reg. v. Kashinath Bachaji Bagul, 8 Bom. Rep. Crown Cases, 168.

A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within Exceptions 8 and 10 of section 499 of the Indian Penal Code.

Reg. v. Kikabhai Parbhudas, 9 Bom. Rep. 451.

In framing a charge of defamation under Act XXV of 1861, it is not necessary to negative the exceptions contained in section 499 of the Indian Penal Code. It is not an error in law for a Judge to require a person accused of defamation to prove the several distinct imputations contained in a libellous article published by him, with the same strictness with which he would be required to prove them if he were the defendant in a civil action. The High Court, as a Court of revision, cannot interfere with the findings of the lower Appellate Court on questions as to the truth of the allegations contained in a libel or the *bona fides* of the accused, but upon such questions as are bound by the findings of the lower Court.

Proceedings of 27th April 1880. Weir, 223.

The absence of reasonable cause for making an imputation is evidence of the absence of good faith.

Syed Hussain accused. Weir, 224.

A charge of defamation should specify clearly the person whose reputation is injuriously affected.

Chalil Kothali and others, accused. Weir, 225.

An allegation of excommunication from caste made by certain persons for the purpose (presumably) of securing themselves against caste penalties, and found to be inaccurate rather than untrue—held, not to amount to defamation.

Heckford v. Galstin, 2 Hyde's Rep. 274.

A letter is written by order of the manager of a firm reflecting upon the character of a professional man, and signed by him, and handed over to a clerk to copy in the ordinary way in the office copy letter book, which is open to all the members of the firm. Held, that such instructions to copy amount to publication.

DISOBEDIENCE TO ORDER OF PUBLIC SERVANT.

Amiraddi in re, 3 B. L. R. A. Cr. 45; S. C. 12 S. W. R. Cr. R. 36.

A Magistrate issued an order warning owners of cattle to take proper care of them; and that in case of disobedience or neglect they would be punished according to law; and did punish them for disobedience, under section 188 of the Penal Code.

Held, that the Magistrate was not competent, under section 62 of the Code of Criminal Procedure (Act XXV of 1861) to pass such an order. The order contemplated under this section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. That the conviction under section 188 of the Penal Code was illegal.

Reg. v. Ramtoonoo Singh, 12 S. W. R. Cr. R. 49.

Before a conviction can be had under section 188, Penal Code, it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act.

Gopal Burnawar in re, 3 B. L. R. A. Cr. 13.

Where an order under section 318 of the Criminal Procedure Code (Act XXV of 1861) was made between A. on the one side, and B. and the then tenants of B. on the other, declaring that A. was in possession of the property in dispute,—Held, that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B. could not be criminally punished for disobeying the order in question.

Sreenath Ghose, case of, 10 S. W. R. Cr. R. 33.

A conviction for non-attendance in obedience to an order from a public servant, under section 174, Penal Code, cannot be had, unless the person summoned was legally bound to attend, and refused or intentionally omitted to attend.

Dwarick Misser & others, petitioners, 18 S. W. R. Cr. R. 30.

Where by direction of Government, the Magistrate promulgated an order under section 62, Code of Criminal Procedure, (Act XXV of 1861) directing all persons to abstain from hook-swinging or other self-torture in public, and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under section 188 and 114, Penal Code for having knowingly disobeyed that order.

Reg. v. Subun Singh and others, 23 S. W. R. Cr. R. 57.

To support a conviction, under section 188, Penal Code, there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate such order. Section 518 of the Code (Act X of 1872) which relates to local nuisances has no application to a case like this which refers to the collection of market dues.

Unnoda Proshad Dutt & others, v. Ranee Shama Soonduree, 24 S. W. R. Cr. R. 20.

An order which declares that as between the parties to a contention, certain land in dispute does not belong to the public, is not one the contravention of which can form the subject of an order under the Indian Penal Code, section 188.

Reg. v. Mozafar Khalifa, 9 B. L. R. App. 36.

An order by a Magistrate, prohibiting the straying of cattle within certain local limits, is not an order within the meaning of section 62 of the Code of Criminal Procedure (Act XXV of 1861). There can be no conviction for disobedience of such order under section 289 of the Penal Code.

Chundra Kanta De in re, I. L. R. Calc. 445, S C. 7 C. L. R. 350.

Section 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court, is committal for contempt.

Kaliprosunna Ghose in re, 7 C. L. R. 575.

An omission or neglect by a zemindar when called upon under section 21 of Regulation XX of 1817 to nominate some one to fill the office of village watchman which had become vacant is not an offence under either section 187 or section 188 of the Indian Penal Code.

Prosunno Coomar Chatterjee v. Empress, 8 C. L. R 231.

In case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power under section 518 of Act X of 1872 to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Court, and a conviction under section 188 of the Penal Code for disobeying such an order cannot be sustained.

Empress v. Bakhshi Ram & others, 3 I. L. R. All. 201.

A Magistrate directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." Held, that such order was not authorized by sections 90 and 91 of Act X of 1872, and the conviction of such landholder, under sections 187 and 188 of the Penal Code, for disobedience to such order, was not maintainable.

Reg. v. Ungun Lall, 1 N. W. P. Rep. All. 303.

Before a fine can be inflicted under section 174, Indian Penal Code, for non-attendance, it must be proved that such non-attendance was in the nature of a wilful disobedience.

Reg. v. Ameer Khan, 2 N. W. P. Rep. All. 113.

An enquiry should be made into the excuse given by a person for his non-attendance as a witness before enforcing a fine for such non-attendance in order that the Sessions Judge, or other authority, may fairly exercise the discretion given him by section 221 of the Criminal Procedure Code (Act XXV of 1861).

Proceedings of 16th March, 1868. 4 Mad. Rep. Rul. 5.

A conviction under section 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant, will not stand where the evidence fails to show that the disobedience caused, or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or that it caused danger to human life, health, or safety, or caused or tended to cause a riot or affray.

Proceedings of 1st August 1871. 6 Mad. Rep. Rul. 29.

Accused was summoned as a witness in a case to be heard on 27th May. The summons was not served personally on accused, but affixed to the door of his house. On the appointed date the case was not taken up, but was adjourned by public proclamation until June 5th. On this latter date accused failed to attend. For this he was convicted of an offence under section 174 of the Penal Code. There was no evidence that the summons had been brought to the knowledge of the accused so as to require him to attend on the first occasion. Held, that on the ground of there being no evidence of the commission of an offence the conviction must be quashed. The adjournment of a trial by public proclamation is irregular and objectionable.

Proceedings of 30th Nov. 1871. 6 Mad Rep Rul 44.

A Sub-Magistrate convicted certain persons, under section 174 of the Penal Code, of disobedience to summonses issued by him as Tahsildar. Held, that the convictions under the first part of section 174 were sustainable. Madras, Act III of 1869 gives a Tahsildar power to issue summonses.

Proceedings of 4th Nov. 1872. 7 Mad. Rep. Rul. 11.

Madras, Act III of 1869, is the only provision of the law, which authorizes a Tahsildar to issue a legal summons, disobedience to which would constitute an offence.

Reg. v. Bhau bin Vithu & another, 3 Bom. Rep. Crown Cases, 53.

Convictions and sentences for disobeying an order duly promulgated by a public servant, reversed; as the Mámlatdár, who stated that he proceeded under Bombay, Act V of 1864 was not thereby empowered to make the order.

Reg. v. Khandoji bin Tanaji, 5 Bom. Rep. Crown Cases, 21.

Conviction and sentence for disobeying an order made, by a Mámlatdár, under Bombay Act V of 1864, directing the accused to keep a gateway open, reversed, as the Mámlatdár was not empowered under that Act to make the order.

Reg. v. Venkaji Bhaskar, 8 Bom. Rep. Crown Cases, 19.

A Mahalkari invested with the powers of a 2nd Class Subordinate Magistrate cannot issue a summons under section 8 of Act XI of 1843, nor can a person be convicted under section 174 of the Indian Penal Code for having disobeyed such summons so issued.

Reg. v. Manikram Surajram, 11 Bom. Rep. 231.

To render a person liable for disobedience of a notice under section 15 of Bombay, Act IV of 1868, it is necessary that the documents required for inspection should be therein specified.

Disobedience of an order to produce evidence under section 14 of Bombay, Act I of 1865, cl. 1, does not render a person liable to criminal prosecution, but simply to an adjudication in his absence.

Proceedings of 20th Nov. 1875. Weir, 58.

Section 188 of the Penal Code applies only in cases in which an order has been issued by a public servant, and disobedience to the order causes or tends to cause the ill-effects enumerated in the section.

Proceedings of 18th January 1878. Weir, 59.

An order not to place stake-nets in parts of a river where it has not been usual to place them, is not an order of such a kind that disobedience to it is punishable under section 188 of the Penal Code.

Proceedings of 3rd April, 1880. Weir, 60.

A prosecution under this section (S. 188, Indian Penal Code) for disobedience of an order made under section 521 of the Code of Criminal Procedure cannot be entertained without the special sanction of the Magistrate whose order was disobeyed: the mere promulgation by a Magistrate of an order under section 521, Criminal Procedure Code, and the disobedience of such an order are not of themselves sufficient to constitute the offence.

ESCAPE FROM LAWFUL CUSTODY.

Reg. v. Degumber Aheer & another, 21 S. W. R. Cr. R. 22.

Before a conviction can be had under section 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody.

Reg. v. Ram Saran Tewary, 24 S. W. R. Cr. R. 45.

Where a person apprehended on a charge of a cognizable offence, escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognizable offence, the Police Officer, who apprehends him without warrant, does not have him in lawful custody, and his escape is not punishable under the Indian Penal Code, section 224.

Reg. v. Rughoobur Singh & Mussamut Doolaroo, 25 S. W. R. Cr. R. 1.

Where a party was sentenced to ten months' imprisonment for escaping from a confinement which he was undergoing without warrant of law, and without having committed an offence, the High Court, in the exercise of its powers of interference, set aside the sentence.

Empress v. Shasti Churn Napit, 6 I. L. R. Calc. 331.

An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour, is not punishable under either section 224 or 225 of the Penal Code.

Reg. v. Sheoumber Lal, 4. N. W. P. Rep. All. 4.

A Superintendent of a Jail has no power under Act XXVI of 1870, to imprison for one year a night-watchman convicted before him on a charge of aiding and abetting the escape of a prisoner. Neither had he power under Regulation XIV of 1816.

Reg. v. Bojjigan, 5 I. L. R. Mad. 22, S. C. Weir, 89.

Escape from the custody of a village watchman, by a person wanted by the Police on a charge of theft, and arrested on suspicion by the village watchman, is no offence under section 224 of the Indian Penal Code. Reg. *v.* M. Sinnadu Padiyachi followed. In this case the prisoner was convicted of theft and escape from lawful custody (section 224, Indian Penal Code), and sentenced for the latter offence to two months' rigorous imprisonment. The prisoner stole a cow and a calf. Complaint was made to the Police Station Officer. The village Talyári (watchman), hearing that the prisoner was wanted, arrested him, and, with the assistance of the village Totti (village servant), kept him in custody. The prisoner escaped and was arrested by the Police. The District Magistrate referred the case for the orders of the High Court under section 296 of the Code of Criminal Procedure (X of 1872), on the ground that the prisoner's conviction on the second count could not be sustained. (Queen *v.* M. Sinnadu Padiyáchi). The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following judgment:—The Second-class Magistrate convicted the accused of theft and

escape from lawful custody. The sentence of two months' rigorous imprisonment awarded for the latter offence must be set aside. The custody of the fifth and sixth witnesses—a Talyári and a Totti respectively—from which the prisoner is said to have escaped, was not a lawful custody, as the offence of theft was not committed in the presence of either of them (Criminal Procedure Code, section 105) and they are not Police officers.

Reg. v. Sinnadu Padiyachi, 5 I. L. R. Mad. 22 (foot note) S. C. Weir, 88.

A personer caught stealing limes, was brought by the owner to the village Magistrate, who put him into the stocks, and put the Talyári and Vettiyan in charge over him. They went to sleep, and the prisoner released himself. Held, that the confinement of the accused before conviction in the stocks was not lawful custody (Madras Regulation XI of 1816), and that the village watchman was not a Police officer within the meaning of Act XXIV of 1859, because he had not been enrolled or invested with power under section 11 of that Act. Conviction for escaping from lawful custody annulled, 23rd September 1878.

Proceedings of 22nd Dec. 1866, 3 Mad. Rep. App. 11.

Escapes by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code.

Proceedings of 19th Jan. 1867, 3 Mad. Rep. App. 23.

A person in custody from his inability to give security, is not in custody for an offence with which he has been charged or of which he has been convicted.

Ramasamy, Appellant, 4 Mad. Rep. 152.

To constitute the offence of escaping from transportation under section 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement, and have returned before his term of transportation had expired or been remitted.

Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation: Held, that he had committed an offence punishable under section 224 and not under section 226 of the Penal Code.

Proceedings of 28th Oct. 1874. 7 Mad. Rep. Rul. 41.

Defendant, being detained in custody for the purpose of giving security for good behaviour, escaped from that custody. Held, that he had not committed an offence under section 224 of the Penal Code.

Reg. v. Sardar Pathu, 1 Bom. Rep. 38.

Section 174 of the Indian Penal Code, does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court.

Reg. v. Dossa Sera, 1 Bom. Rep. 139.

A convict escaping from custody, must be tried for that offence in the district within which he escaped; a Magistrate of another district has not jurisdiction to try him for the offence.

Reg. v. Poshu bin Dham Baji Patil, 2 Bom. Rep. 128.

Escaping from lawful custody, is not obstructing a public servant in the discharge of his public functions within the meaning of section 186 of the Penal Code.

Reg. v. Connon, 6 Bom. Rep. Crown Cases, 15.

To escape from custody under civil process, is not a criminal offence within the meaning of section 8 of the Presidency Towns Police Amendment Act of 1860.

Quære:—Whether such an escape without force is a misdemeanour at Common Law.

Empress v. Harakhnath Singh, 4 I. L. R. All. 27.

A Revenue Court is a "Court of Civil Judicature" within the meaning of section 651 of the Code of Civil Procedure (Act X of 1877). A person, therefore, who escapes from custody under the process of a Revenue Court, is punishable under that section. Section 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." Held, therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under section 651 for escaping from "lawful custody."

Shasti Napit in re, 10 C. L. R. 290.

A person who was arrested under section 94 of the Criminal Procedure Code (Act X of 1872), in order that he might be taken before a Magistrate and bound over to be of good behaviour, escaped from custody before he could be produced before the Magistrate. Held, that assuming he had been legally arrested, he could not be considered to be "lawfully detained in custody for any offence" and was therefore not liable to punishment under section 224 of the Indian Penal Code; and further, that inasmuch as he had not failed to furnish security for good behaviour, he was not liable to punishment under section 225 A. of the same Code.

Empress v. Amar Nath & another, 5 I. L. R. All. 318.

The apprehension of a judgment-debtor in execution of a decree, without the officer making the apprehension having the warrant of the Court executing the decree in his possession at the time of making the apprehension, is illegal; and therefore in such a case the judgment-debtor does not render himself liable to punishment under S. 651 of the Civil Procedure Code, if he escapes from the custody of the officer making the apprehension. *Quære:*—Whether a person convicted under S. 651 of the Civil Procedure Code, of escaping from lawful custody, who is sentenced to one month's imprisonment only, can under S. 588 (29) of that Code appeal.

EXPOSURE OF CHILDREN.

Felani Hariani, prisoner, case of, 16 S. W. R. Cr. R. 12.

Section 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children not being able to take care of themselves may run the risk of dying or being injured.

EXTORTION.

Reg. v. Gregory, 1 Ind. Jur. N. S. 423.

The feigning of an attempt to commit suicide, in order to extort money is an offence under section 387 of the Indian Penal Code.

Reg. v. Meajan & Obhoychurn Doss, 4 S. W. R. Cr. R. 5.

To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury, and thereby dishonestly inducing him to part with his property. The mere issue of a hookumnamah (to collect statistical information) by a police officer, is no legal ground for a conviction of abetment of cheating or extortion.

Reg. v. Mobarruk & others, 7 S. W. R. Cr. R. 28.

The terror of a criminal charge is a fear of injury, within the meaning of those words in section 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false.

Tarinee Prosaud Banerjee & another, petitioners, 18 S. W. R. Cr. R. 8.

Where a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under section 323, Penal Code) and extortion (section 384) although the accused ought to have been charged under section 327 and tried by the Court of Sessions, the High Court declined to interfere under section 404, Code of Criminal Procedure (Act XXV of 1861) and direct a new trial, believing that substantial justice had been done in the case.

Meer Abbas Ali v. Omed Ali, 18 S. W. R. Cr. R. 17.

The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of section 384 of the Penal Code.

Proceedings of 14th January 1870, 5 Mad. Rep. Rul. 14.

The defendant was junior vakil for the complainant (the defendant in a case before the Magistrate) and was instructed by his senior to apply for an adjournment, but the defendant obtained a bond from the complainant and conducted his defence. The defendant was convicted of extortion: Held, that the conviction was bad.

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Reg v. Shankar Bhagvat, 2 Bom Rep. 394.

Held that it is not necessary in a case of extortion, under the Indian Penal Code, that the threat should be used, and the property received, by one and the same individual; nor that the receiver should be charged with abetment, although that might be done.

Reg v. Abdul Kadar valad Bala Abuji, 3 Bom. Rep. Crown Cases, 45.

A conviction of extortion by a Full Power Magistrate, and an order of a Sessions Judge rejecting an appeal therein, reversed by the High Court, under section 404 of the Criminal Procedure Code (Act XXV of 1861) as there was no such *fear of injury* as is contemplated by section 383 of the Indian Penal Code; nor was the delivery of money by the complainants *thereby induced;* nor did it appear from the evidence that the money was obtained *dishonestly* by the prisoner, who might have demanded it, believing in good faith that he was entitled to it.

Proceedings of 14th Jan. 1870, Weir, 163.

A threat of withholding services as a Joint Vakil unless an additional fee was paid, held not to amount to extortion.

Proceedings of 12th Jan. 1880, Weir, 164.

Where the owners of trespassing cattle paid a penalty to private persons under the influence of a threat that the cattle would be impounded if the payment demanded were refused: Held, that the offence of extortion had not been established. The charges were paid under threat of what was a lawful proceeding, and one which did not furnish ground for a civil action, and therefore was not an injury within the meaning of the Code.

FALSE CHARGE.

Reg. v. Bhugwan Ahir, 8 S. W. R. Cr. R. 65.

Where a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under section 211 (and not under section 195) of the Penal Code.

Reg. v. Banomally Sohai, 5 S. W. R. Cr. R. 32.

To prefer a complaint to the Police, in respect of an offence which they are competent to deal with, and thereby to set the Police in motion is to institute a criminal proceeding within the meaning of section 211 of the Penal Code.

Reg. v. Chidda, 3 N. W. P. Rep. All. 327

A person may in good faith institute a charge which is subsequently found to be false, or he may with intent to cause injury to an enemy institute criminal proceedings against him, believing there are good grounds for them, but in neither case has he committed an offence under section 211 of the Penal Code. To constitute this offence it must be shown that the person instituting criminal proceedings knew *there was no just or lawful ground for such proceedings.* The averment that the accused knew that there was no lawful ground for the charge instituted is a most material one.

Reg. v. Navalmal valad Umedmal, 3 Bom. Rep. Crown Cases, 16.

Where a person is charged under section 211 of the Penal Code, with having, with intent to injure, falsely charged another with an offence knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted; and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him.

Reg. v. Nobokisto Ghose, 8 S. W. R. Cr. R. 87.

Under section 211, Indian Penal Code, "instituting a criminal proceeding" may be treated as ar offence in itself, apart from "falsely charging" a person with having committed an offence.

Where a person is charged with instituting a criminal proceeding with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not for the prisoner in the first instance to show that he had just or lawful grounds.

Reg v. Prankishen Bid, 6 S. W. R. Cr. R. 15.

It is not a sufficient ground for a charge, under section 211 of the Penal Code, that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement, which is not or ought not to be sufficient to satisfy a reasonable mind, if in truth he did not know at the time he made the complaint that there was no just and lawful ground for making it.

Reg. v. Ramdoss Boistub, 11 S. W. R. Cr. R. 35.

Where a Deputy Magistrate instituted proceedings against a complainant and his witnesses, for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused.

Reg. v. Subbanna Gaundan & others, 1 Mad. Rep 30.

To constitute the offence of preferring a false charge, under section 211 of the Penal Code, the charge need not be made before a Magistrate, nor need the charge have been fully heard and dismissed, it is enough if it is not pending at the time of trial.

Reg. v. Toobana Gounden, 1 Ind. Jur. O S. Decr. 1862.

The false charge referred to in section 211 of the Penal Code, must not necessarily be made before an officer exercising magisterial powers; it may be made before the proper Police officer. To support an indictment under this section, it is not essential to show that the alleged false charge has been finally disposed of; it is sufficient to show that the charge was not pending at the time of the trial, which may also be assumed.

Gour Mohun Sing. in re 8 B. L. R. App.

The Sessions Judge of Hooghly submitted the following case for the opinion of the High Court: "The petitioner fir t applied to the Police, accusing certain persons of having committed theft. The Police enquired into the

11 S. C. 16 S W. R. Cr. R. 44.

case, and reported that the case was a false one. The petitioner pending the enquiry, applied to the Deputy Magistrate, calling the acts of the Police in question, and asking for the Deputy Magistrate's personal investigation into his complaint. The Deputy Magistrate took up the petition with the Police Report, and summoned the petitioner on a false complaint under section 211 of the Penal Code, without taking any evidence on petitioner's behalf.

The Sessions Judge cited the cases of Reg. *v.* Shaik Edoo (2 S. W. R. Cr. 47) and Dinonath Gope *v.* Saroda Mookopadhia (7 S. W. R. Cr. 47) and continued: "The Deputy Magistrate was bound to take the evidence of the witnesses of the complainant respecting the matter which he charged against the accused, in as much as it was a charge cognizable under Chapter XIV of the Code of Criminal Procedure; and until he had done so, and found the charge to be unsustained, he was not justified in dismissing the petitioner's case and instituting proceedings against him under secction 211 merely upon the Police Reports."

The opinion of the High Court was expressed by KEMP, J.:—The rulings quoted by the Judge were passed before Act VIII of 1869 came into operation. Under section 249 of Act VIII the provisions of section 180 have been made applicable to trials of offences under Chapter XIV of the Criminal Procedure Code.

In this case the petitioner charged a number of people with dacoity. During the Police enquiry the petitioner became dissatisfied with the proceedings of the Police, and charged them with partiality. He applied to the Deputy Magistrate to proceed to the spot in person and to examine the witnesses adduced by the prosecutor. The Deputy Magistrate took no action in the matter, but waited the Report of the Police.

The Police reported the charge as false, and the Deputy Magistrate, without taking any evidence or making any further enquiry, has directed the petitioner to be tried for an offence under section 211. We think that, although under section 180, the Deputy Magistrate was competent to dismiss the complaint, if in his judgment there was no sufficient ground for proceeding in it, this was a case in which the Deputy Magistrate ought to have made some enquiry to satisfy himself that the proceedings of the Police were not, as stated by the petitioner, partial and improper, before charging the petitioner under section 211. We direct the Deputy Magistrate to proceed with reference to the above remarks.

Ashrof Ali v. The Empress, 5 I. L. R. Calc. 281.

There is nothing in section 211 of the Penal Code, which limits the penalty there imposed, to cases in which attempts have been made to substantiate false charges in a Court of Justice. A false charge made before the Police is therefore punishable under this section.

Bhokteram v Heera Kolita, 5 I. L. R. Calc. 184.

An offence under section 211 of the Penal Code, includes an offence under section 182; it is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under section 211 (see Raffee Mahomed *v.* Abbas Khan, 8 S. W. R. Cr. 67.)

Empress v. Jamoona, 6 I. L. R. Calc. 620.

It is necessary for a conviction under section 211 of the Penal Code, that the false charge should have been made to a Court or officer having Jurisdiction to investigate and send it up for trial.

Government v. Karimdad, 6 I. L. R. Calc. 496, S. C. 7 C. L. R. 467.

Before a person can be put upon his trial for making a false charge under section 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, *not before the Police, but before the Magistrate.* Magistrates should clearly understand that whilst the Police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected.

Empress v. Salik Roy, 6 I L. R. Calc. 528, S.C. 8 C.L.R. 255.

A commitment for trial under the provisions of section 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal, merely because the complaint which the accused made has not been judicially enquired into, but is based on the report of the Police that the case was a false one.

Sokhina Bibee in re & Empress v. Grish Chunder Nundi, 7 I.L. R Calc 87, S. C. 8 C. L R. 387.

Upon a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local enquiry by a competent Police Officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner who ordered the prosecution, and prisoner was convicted. Held, that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the Police, have communicated its contents to the prisoner, and afforded her an opportunity of substantiating her complaint, and then should have decided the case.

Gyan Chunder Roy v. Protab Chunder Doss, 7 I L. R Calc. 208 S. C. 8 C. L. R. 267.

Where a charge had been preferred against a person, and the Magistrate, before whom it was heard, after hearing the statement of the complainant but not those of his witnesses, dismissed the complaint, and subsequently, on the application of the person charged, granted him leave under section 470, (Act X of 1872) to prosecute the complainant for bringing a false charge; Held, that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done. Held also, that there is a distinction in the proceedings to be adopted when a sanction is given under section 470 and the institution by the Court of its own motion of proceedings under section 470.

Syed Nissar Hossein *v.* Ramgolam Sing (25 S. W. R. Cr. R. 10) dissented from, see however in re Sokhina Bibee (7 I. L. R. Calc. 87).

Giridhari Mundul & another in re & Giridhari Mundul v. Uchit Jha, 8. I. L. R. Calc. 435.

A Magistrate should not direct a prosecutor to be put upon his trial under section 211 of the Penal Code, without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. The sanction to prosecute, contemplated in section 468 of the Criminal Procedure Code (Act X of 1872), is not a direction to prosecute, but is a permission granted to a private person, to exercise his own unfettered discretion as to whether he will take proceedings or not.

Choolhaie Telee, petitioner in re, 2 C. L. R. 315.

A petition was presented to the Joint Magistrate, charging the Police with having made a false report of an investigation which they had been directed to make at the instance of the petitioner. The Joint-Magistrate, after reading the Police Report, rejected the petition, and directed the petitioner to be prosecuted under section 211 of the Indian Penal Code, for having made a false charge; Held, that the Joint-Magistrate should not have made the order without first instituting an inquiry into the truth of the complaint, such as is required by section 471 of the Code of Criminal Procedure. Queen *v.* Gour Mohun Singh, 16 W. R. 44 and in the matter of Sayed Nisser Hossein, 25 W. R. 10 considered.

Gangoo Singh & others, 2 C. L. R. 389.

A Magistrate is not competent to discharge the accused in a warrant case, and order the complainant to be prosecuted for making a false complaint, until he has examined all the witnesses cited by the complainant.

Russicklal Mullick in re, 7 C. L. R. 382.

Where a person has instituted a charge found to be false by the Police, a Magistrate, except under exceptional circumstances, is not justified merely on a perusal of a Police report, which has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under section 182 of the Penal Code, but should proceed under section 211.

When a charge is pronounced false by the Police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation.

Jamaria, appellant, in re, 8 C. L. R. 215.

A Station Staff Officer having neither Magisterial nor Police powers, a false charge made before him does not amount to such a criminal proceeding, as is referred to in section 211 of the Indian Penal Code. A "false charge" to make the above section applicable, must be made to a Court, or to an officer who has powers to investigate, and send it up for trial.

Bramanund Bhuttacharjee, appellant in re, 8 C. L. R. 233.

A statement made to the Police of a suspicion that a particular person had committed an offence is not a "charge" within the meaning of section 211 of the Indian Penal Code, nor does it amount to the institution of a criminal proceeding, and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section.

Chukradar Potti, appellant in re, 8 C. L. R. 289.

A charge laid against certain persons before the Police, having been reported false by that body, the person who made the charge complained to the Magistrate of the District who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer.

No further investigation having taken place, the complainant was ordered to be prosecuted under section 211 of the Indian Penal Code, and on trial was convicted and sentenced. On appeal to the High Court it was held that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. In the matter of Russicklall Mullick, 7 C. L. R. 382 and in the matter of Biyoyi Bhagut, 4 C. L. R. 134 followed.

Per MACLEAN, J. :—The proper principle which should guide a Magistrate is, that if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police enquiry, he would be justified in proceeding against a person who has made a complaint to the Police, which has been found to be false; but if a complaint is made, that complaint must be dealt with judicially. It is unfair, even then, to proceed against the complainant without hearing any witnesses whom he may wish to examine.

Per MITTER, J. :—Although a Magistrate has power under section 147 of the Criminal Procedure Code (Act X of 1872), to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under section 211 of the Penal Code, should be granted.

See In the matter of Gyan Chunder Roy, 8 C. L. R. 267.

Empress v. Salik, 1 I. L. R. All. 527.

To constitute the offence of making a false charge, under section 211 of the Indian Penal Code, it is enough that the false charge is made, and that the charge is not pending at the time of the offender's trial. Reg. *v.* Subbanua Gaundan (1 Mad. H. C. Rep. 30) followed.

As this case merely follows Reg. *v.* Subbanua Gaundan already followed in Empress *v.* Abdul Hasan (I. L. R. 1 All. 497) it is not reported in detail.

Empress v. Abdul Hasan, 1 I. L. R. All. 497.

To constitute the offence of making a false charge, under section 211 of the Indian Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. Reg. *v.* Subbanua Gaudan, (1 Mad. H. C. R. 30) followed. Reg. *v.* Bishoo Barik, (16 S. W. R. Cr. 77) distinguished.

Empress v. Baldeo, 3 I. L. R. All. 322.

B. charged certain persons before a Police officer with theft. Such charge was brought by the Police to the notice of the Magistrate having jurisdiction, who directed the Police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B. on a charge of making a false charge of an offence,

an offence punishable under section 211 of the Penal Code, and convicted him of that offence. Held, that as such false charge was not preferred by B. before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of sections 468 and 473 of Act X of 1872 were inapplicable, and such Magistrate was not precluded from trying B. himself, nor was his sanction or that of some superior Court necessary for B.'s trial by another officer. Empress *v.* Kashmiri Lal, I. L. R. 1 All. 625) distinguished. Observations by STUART, C. J. on the careless manner in which the charge in this case was framed.

Reg. v. Mata Dyal, 4 N. W. P. Rep. all 6.

If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in section 211 of the Indian Penal Code.

Reg. v. Rhedoynath Biswas, 2 S. W. R. Cr. R. 45.

The mere fact of being in a subordinate position, will not shield a man from the consequences of false and malicious charges made by him officially.

Raffee Mahomed v. Abbas Khan, 8 S. W. R. Cr. R. 67.

Sections 182 and 211 of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the Police, and charged the now complainant with having caused the death of the accused's child by poisoning.

Nabodeep Chunder Sirkar, petitioner, 11 S. W. R. Cr. R. 2.

Section 211 of the Penal Code, applies not only to a private individual, but also to a Police officer who brings a false charge of an offence with intent to injure.

Bishoo Barik case of, 16 S. W. R. Cr. R. 67.

Where a charge of theft was reported by the Police to be false, Held, that the Magistrate ought first to have enquired into the charge of theft, and passed some orders upon it, before proceeding under section 211 of the Penal Code to enquire into the offence of false charge.

Reg. v. Hunooman Lal, 19 S. W. R. Cr. R. 5.

Where a person who is interested in the matter, or has a certain official responsibility, says to a Police officer, "A. tells me that X. has committed a certain offence, and B. and C. confirm the statement, and I accordingly suspect X.," and follows up that statement by an application to have X.'s house searched, he prefers a charge against X. If such charge be false, he may be convicted under section 211 of the Penal Code.

Reg. v. Hoolas alias Suttoo 23, S. W. R. Cr. R. 32.

Where the charge is one of instituting a false charge of an offence with intent to injure, the actual information which the prisoner made at the thannah ought to be given in evidence and form part of the record.

Government of Bengal v. Gokool Chunder Chowdhry, 24 S. W. R. Cr. R. 41.

A complaint made at a Police-station is not made before any Civil or Criminal Court, and, if it proves false, prosecution for it does not require the sanction of any Court under section 468, Code of Criminal Procedure (Act X of 1872).

Ram Runjun Bhandari v. Madhub Ghose 25 S. W. R. Cr. R. 33.

The sanction of a court to a prosecution for a false charge is necessary when the offence has been committed before such court, and otherwise; and a judicial finding of the falsehood of a charge is not indispensable to such a prosecution. Circular Order No. 19 of 1863 refers only to prosecutions under section 211 Indian Penal Code.

Reg. v. Ram Panda & another, 9 B. L. R. App. 16.

A person cannot be convicted of abetment of a false charge, solely on the ground of his having given evidence in support of such charge.

Viranna v. Nagayyah, 3 I. L. R. Mad. 6.

A criminal prosecution for an offence under section 211, Indian Penal Code (false charge) is not a condition precedent to the right to sue for damages. The bringing of a civil suit imports no corrupt agreement or compounding of the offence in such a case. Shamachurn Bose *v.* Bholanath Dutt, (6 S. W. R. Civ. Ref. 9) followed.

Reg. v. Arjun, 1 Bom. Rep. 87.

When a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding and entered in the calendar.

Empress v. Bhawaniprasad & another, 4 I. L. R. All. 182.

Where a Magistrate dismisses a complaint as a false one under section 147 of the Criminal Procedure Code (Act X of 1872), and decides to proceed against the complainant under section 471 for making a false charge, he is not bound before so proceeding, to give the complainant an opportunity of substantiating the truth of the complaint, by being allowed to produce evidence before him.

Empress v. Pitam Rai, 5 I. L. R. All. 215.

The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of section 211 of the Indian Penal Code, and if a person only makes a false charge, his case falls under the first part of the section, irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards."

Empress v. Jamni, 5 I. L. R. All. 387.

J. complained to the Police that she had been raped by R. The Police having reported the charge to be false, criminal proceedings were instituted against her under section 182 of the Penal Code. In the meantime J. made a complaint in Court, again charging R. with rape. This complaint was not disposed of, but the proceedings against her under section 182 of

Penal Code were continued, and she was eventually convicted under that section. Held, setting aside the conviction and directing that J.'s complaint should be disposed of, that such complaint should have been disposed of before proceedings were taken against her under section 182.

Empress v. Parahu, 5 I. L. R. All. 598.

Where no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of section 211 of the Indian Penal Code, the person making such charge is punishable only under the first part of that section.

Reg. v. Bhitto Kahar, Ind. Jur. O. S. December 1862.

To establish a charge under section 211 of the Penal Code, it is necessary to show that the accused knew, or had reason to believe, that an offence had been committed. Under section 205 of the Penal Code, it is criminal to personate an imaginary person.

FALSE CLAIM.

Reg. v. Begun Mahtoon, 12 S. W. R. Cr. R. 37.

Where a person applies for the execution of a decree which has already been executed, his offence falls, not under section 209, but section 210 of the Penal Code. Section 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought.

FALSE EVIDENCE.

Reg v. Abdool Azeez, 7 S. W. R. Cr. R. 59.

The offence of making a false charge, and the offence of intentionally giving false evidence, are not cognate offences or parts of the same offence, but may be punished separately.

Reg. v. Ahmed Ally & others, 11 S. W. R. Cr. R. 25.

In trying a prisoner charged with giving false evidence, a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true. Held, that it was not the proper way to try a case, to rely on mere theories of medical men, or skilled witnesses of any sort against facts positively proved.

The true rule in a case of giving false evidence, is that no man can be convicted of such offence, except on proof of facts which if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If a criminal fact is ascertained, an actual *corpus delicti* established, presumptive proof is admissible to fix the criminal.

Reg. v. Bedoo Noshyo, 12 S. W. R. Cr. R. 11.

An alternative finding under section 381 of the Code of Criminal Procedure (Act XXV of 1861), should not be resorted to, until both committing officer and the Sessions Judge are satisfied, that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence, upon two statements which are not absolutely contradictory, the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made.

Reg. v. Bhakoas Tateenee, 7 S. W. R. Cr. R. 13.

In a case of false evidence, it is necessary to prove the deposition alleged to contain the false statement.

Reg. v. Bhuttoo Lalljee & Seboo, 2 S. W. R. Cr. R. 51.

Though a charge does not distinctly specify the false statement on which the offence of perjury is attempted to be established, the omission is not material if the accused has not been prejudiced thereby.

Reg. v. Bishoo Bewa & Pipree Bewah, 7 S. W. R. Cr. R. 102.

Case of perjury by females, in which the majority of the Court refused to reduce the punishment, the perjury being deliberate, and from very bad and corrupt motives.

Reg. v. Bulloram & another, 7 S. W. R. Cr. R. 104.

A Magistrate has no jurisdiction to try, but must commit to the Sessions, a case of perjury committed before him in the course of a proceeding taken under section 318 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Bykantnauth Bannerjee, 5 S. W. R. Cr. R. 72. S. C. 3 B. L. R. 2, note F. B.

An enquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under section 193 of the Penal Code.

Reg. v. Chota Jadub Chunder Biswas, S. W. R. 1864, Cr. R. 15.

When a plaintiff before a Moonsiff, came and petitioned the Judge, complaining that the Moonsiff had improperly refused to examine his witnesses, and had dismissed his suit, although informed that witnesses were in attendance, and the Judge upon examining the petitioner upon solemn affirmation, and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence. Held, that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non judice*, could not form the subject of a prosecution for false evidence.

Reg. v. Chundee Churn Nath & others, 8 S. W. R. Cr. R. 5.

Where C falsely represented himself to be U. and the writer of a document signed by U, and T., knowing that C. was not U. and had not written such document, adduced C. as U. and as the writer of that document. Held, that T. ought to have been convicted on a charge of abetting the giving of false evidence.

Reg. v. Denonath Bujjur, 9 S. W. R. Cr. R. 52.

Before an accused person can be convicted of giving false evidence, it must be proved that he made the statements which are the basis of the charge, and further, that he made them with the necessary criminal intention. The mere fact that a man has made contradictory statements does not necessarily prove that he has committed an offence under section 193. The Court must be satisfied as to the intention with which the statements were made.

Reg. v. Doorga Nath Roy & others, 8 S. W. R. Cr. R. 9.

Although a Civil Court acted irregularly in sending to the Magistrate for investigation, a case for using or attempting to use false evidence, when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence. Held, that it was in the competency of the Magistrate, under section 68 of the Code of Criminal Procedure (Act XXV of 1861), even without a charge or complaint, to proceed to investigate and if necessary, to commit for trial to the Sessions Court.

Reg. v. Echan Meah, 2 S. W. R. Cr. R. 47.

The making of a false statement without knowledge as to whether the subject matter of the statement is false or not, is legally a giving of false evidence.

Reg. v. Fattick Ally, 1 B. L. R. A. Cr. 13. S. C. 10 S. W. R. Cr. R. 37.

It is essential, in order to sustain a charge under section 193 of Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. A charge under this section, should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made.

The knowledge by the Sessions Judge, of the handwriting of the judicial officer before whom the statement was made, is no evidence of the statement having been made before that officer.

Reg. v. Fazul Meah, & another, 5 S. W. R. Cr. R. 71.

A charge of giving false evidence, should specify the false evidence which the prisoners are supposed to have given.

Reg. v. Gobind Sahoo, S. W. R. 1864, Cr. R. 14.

The denial by a witness, of any relationship to his brother, whose witness he was, was held to be the mildest form in which false evidence could be given, and to merit only a mild punishment.

Reg. v. Gullie Mullick, S. W. R. 1864, Cr. R. 10.

Held by the majority of the Court (dissentiente JACKSON, J.), that there ought to be a *locus pœnitentiæ* for witnesses who have deposed falsely to retract their false statements.

Reg. v. Gurjoon Aheer, 7 S. W. R. Cr. R. 37.

A deliberate mis-statement made in a Court of Justice, whether it tends to endanger the life and property of others, or to defect and impede the progress of justice, is not an offence which should be lightly passed over. But for a simple mis-statement, from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court.

Reg. v. Heeramun Singh, 8 S. W. R. Cr. R. 30.

The offence of giving false evidence in a stage of a judicial proceeding, is not cognizable by an Assistant Magistrate. A Sessions Judge in appeal can quash an illegal conviction by an Assistant Magistrate in such a case.

Reg. v. Janmahomed 3 B. L. R. A. Cr. 47. S. C. 12 S. W. R. Cr. 41.

A Moonsiff sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence under section 193 of the Penal Code. The Magistrate, without completing the investigation, sent the case back to the Moonsiff, who finally committed the prisoner. Held, that while the Moonsiff could have committed the prisoner himself under section 173 of the Criminal Procedure Code, (Act XXV of 1861) without sending him before the Magistrate to conduct the preliminary investigation, on a charge of giving false evidence, the Magistrate had acted irregularly in not himself completing the enquiry. Case remanded to the Magistrate accordingly.

Reg. v. Juggut Chunder Dutt, 6 S. W. R. Cr. 81.

A Sub-Registrar is competent for any purpose contemplated by Act XX of 1866 (Registration Act) to examine any person; and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution.

Reg. v. Kala Khan, 12 S. W. R. Cr. R. 23.

Section 242 of the Code of Criminal Procedure, (Act XXV of 1861,) points out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false.

Reg. v. Kally Churn Gangooly, 6 S. W. R. Cr. R. 92.

In a case of false evidence, reading extracts from the alleged conflicting statements of the prisoner, is not sufficient to enable the jury to form a fair opinion on the question. The whole of the depositions given on each occasion ought to be laid before the jury.

Written reports of depositions are not evidence except in the case provided for by section 369 of the Code of Criminal Procedure (Act XXV of 1861.)

Reg. v. Kally Churn Lahoree, 9 S. W. R. Cr. R. 54.

Charges of perjury, should contain a distinct assertion with regard to each statement intended to be characterised as perjury; that it was made; that it is untrue in fact; that the accused knew it to be so when he made it; and the investigation of the Court should be directed to each of those points singly.

It does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury, nor is the making of a document without authority always forgery.

It is necessary to a proper preliminary enquiry, that the accused (or under certain circumstances his agent), should be present, that the witnesses whose evidence is to be the foundation of the commitment should be examined before him; and that he should have the opportunity of cross examining them. It is essential too, in a case of perjury, that he should know at what period he ceased to be a witness, and at which his position was changed to that of the accused.

In re Haran Mundal, 2 B. L. R. A. Cr. 1 S C 10 S W R. Cr. R. 31.

A. made an application for a new trial under section 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. Held, (GLOVER, *J.* dissenting), that he had not thereby committed an offence under section 191 or 192 of the Penal Code.

Reg. v. Goluk Singh & others, 3 B. L. R. Ap. Cr. 10.

Sanction to a prosecution for perjury, may be given by the Court before which the perjury was committed, at any time, even after the order for commitment to the Sessions has been made.

Reg. v. Adhya Thakoor & others, 17 S. W. R. Cr. R. 33.

Where certain charges did not set out the exact statements made by witnesses which the Magistrate intended to prove false, but the defect was not such as to mislead the accused, the High Court declined to interfere, under section 426 of the Code of Criminal Procedure (Act XXV of 1861), but warned the Magistrate to be careful for the future.

Reg. v. Amere Ali Khan, 3 N. W. P. Rep All 133.

Upon a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that, making it, the accused intentionally gave false evidence.

Reg. v. Boodhun Ahir, 17 S. W. R. Cr. R. 32.

A Magistrate making a commitment for giving false evidence in respect of any offence enquired into under Chapter XII or XIV of the Code of Criminal Procedure (Act XXV of 1861), must set out the precise words recorded as used by the accused, containing the statement which he undertakes to prove false, and not state the effect of those words.

Reg. v Dhurrani Dutt Rai & others, 8 S. W. R. Cr. R. 7.

Discussion as to the extent of punishment to be passed on certain ryots who, in a case of criminal trespass, brought by an indigo planter, falsely swore that cotton and not indigo, had been raised on the land in question during the past year. Punishment reduced. SETON KARR, J. would have reduced the punishment still more for reasons given.

Reg. v. Damodhar Ram Chandra Kalkarni, 5 Bom. R. Cr. R. 68.

To constitute the offence of giving false evidence under section 191 of the Indian Penal Code, it is not necessary that the false evidence given should be material to the case in which it is given. Aliter under section 192.

Where the Senior Assistant Sessions Judge, without taking evidence, acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with.

Reg. v. Ganoji bin Pandji, 5 Bom. Rep. Crown Cases, 49.

Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false.

Reg. v. Issur Chunder Ghose Patri, 14 S. W. R. Cr. R. 53.

The evidence of one witness, in cases of perjury, is sufficient to establish the factum of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court of Sessions.

Reg. v. Kartick Chunder Haldar, 9 S. W. R. Cr. R. 58.

A general sanction by a Judge to a prosecution for giving false evidence, under section 193 of the Penal Code, and for false verification is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. Where a party to a suit makes an application under section 290, Act VIII of 1859, and falsely verifies such application; Held, that although such verification is false, the person making it, is not subject to punishment for the offence of giving false evidence, in as much as an application made under section 290, Act VIII of 1859 does not require verification.

Reg. v. Khoab Lall, 9 S. W. R. Cr. R. 66.

A person accused of perjury, is entitled to have the specific charge made against him, tried quite independently of a like charge against another person, and the Court of Sessions must find judicially whether all, or if not all, which of the particular charges of perjury, where there is more than one charge, made out against each prisoner. A conviction for perjury, moreover, shoul not be sustained on the bare testimony of one witness.

Reg. v. Kola, 4 B. L. R. A. Cr. 4 & 12 S. W. R. Cr. R. 56.

The statement made by a witness before the Magistrate, was opposed t the statement made by him before the Sessions Court On a charge of perjury being made, Held, that statement made by the accused before one Court, wa no evidence of the falsity of a contrary statemen

before another Court to support a conviction of giving false evidence. Held, that neither the Judge nor jury, had any right to assume, that an explanation could not have been given, consistent with both the statements.

Reg. v. Kureem & another, 11 S. W. R. Cr. R. 16.

The commitment and trial together of several persons, who are charged with having given false evidence in the same proceedings, should be avoided. A Court of Session is competent to try separately, prisoners who have been committed together.

Reg v. Lall Chand Kowra Chowkeedar & others 1 Ind. Jur. N. S 83 S C 5 S. W. R. Cr. R. 23; B. L. R. Sup. Vol. 417.

Held, by a full Bench (CAMPBELL, J. dissenting) that the evidence of one witness uncorroborated as to the falseness of the statement on which the perjury is assigned is insufficient.

Reg. v. Luckhee Singh, 12 S. W. R. Cr. R. 23.

Section 177 of the Penal Code, does not apply to the case of any person who is examined by a Police officer, making a false statement, but to cases where, by law, landholders or village watchmen, are bound to give information, and to other analogous cases of the same description.

Reg. v. Modhoosoodun Shaw, 7 S. W. R. Cr. R. 23.

Where a prisoner produced as evidence an account-book, one page of which had been fraudulently abstracted, and another substituted for it. Held, that he was not guilty of the offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence, for the purpose of affecting the decision on the point at issue when the book was tendered.

Reg. v. Mohima Chunder Chuckerbutty, 5 S. W. R. Cr. R. 77.

In a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness, unsupported by corroborative evidence, is insufficient for a conviction.

Reg. v. Munwar Khan, 4 S. W. R. Cr. R. 24.

A charge of perjury held unproved, without proof that the statement on which it was founded, was given on solemn affirmation under Act V of 1840 instead of an oath.

Reg. v. Mussumut Zumeerun, 6 S. W. R. Cr. R. 65. B. L. R. Sup. Vol. 521, F. B.

Where a witness intentionally gives false evidence, and it is doubtful whether the false statement was made before the Magistrate, or before the Sessions Judge, the witness may be convicted of the offence of giving false evidence upon an alternative finding (NORMAN and CAMPBELL, JJ. *dubitantibus*) :—The deposition voluntarily given before the Sessions Judge, is admissible in evidence against the witness to show the falsehood of his deposition before the Magistrate, anything in section 32, Act II of 1855, notwithstanding (CAMPBELL, J. *dissentiente*).

Reg. v. Nagbunsee Lall, 6 S. W. R. Cr. 89.

A conviction on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence.

Reg. v. Nagena Owrut, 3 S. W. R. Cr. R. 6.

Discussion as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the Police under compulsion.

Reg. v. Narain Doss, 1 S. W. R. Cr. R. 15.

It being impossible to decide, which of the prisoners' contradictory two statements was false, and which was true, the prisoners were convicted on the alternative charge.

Reg. v. Nomul, 4 B. L. R. Ap. Cr. 9 & 12 S. W. R. Cr. R. 69.

Where a witness makes a statement before the Court of Session, which contradicts that made by him before the committing officer, and no evidence is given to shew which statement is true, it cannot, under section 172, Act XXV of 1861 be said that an offence has been committed under the cognizance of the Court of Sessions. A Judge's duty on dealing with the contradictory statements of a witness discussed.

Reg. v. Palany Chetty, 4 Mad. Rep. 51.

Proof of contradictory statements on oath, or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under section 72 of the Indian Penal Code, sections 242, 381, and 382 of the Criminal Procedure Code (Act XXV of 1861). The English law upon the subject stated.

Reg. v. Parbutty Churn Sircar, 6 S. W. R. Cr. R. 84.

In a case of false evidence, it is not necessary for the Judge in his charge, to show how the false statements, even if made intentionally, are material in the case.

Reg. v. Poosa Ram & others, 6 S. W. R. Cr. R. 11.

Unsatisfactory conviction for perjury, where the evidence was balanced as to numbers, and where the story for the prosecution was improbable, reversed.

The discretion vested in a Civil Court under section 169, Code of Criminal Procedure (Act XXV of 1861) of sanctioning a criminal charge of perjury, is one that should be most carefully exercised. Remarks on the present case in which the discretion was improperly exercised.

Reg. v. Rowley Ryan & Moodys Nisi Prius Cases, 299; see also, Moodys

In an indictment for perjury committed on the trial of a cause, it is sufficient for the prosecution to prove all the evidence given by the defendant referable to the fact on which perjury is assigned.

Proof of the evidence set out by a witness who speaks from memory, but will not swear that he has

Crown Cases Reserved, page 111.

given the whole of the defendant's former testimony, but says that he has stated to the best of his recollection all that was material to the present enquiry and relating to the transaction in question, and is positive nothing was said qualifying the evidence proved, is sufficient to go to the jury.

"Even on indictments for perjury it is not necessary to state the entire examination, but it will suffice to narrate with accuracy the whole of that portion of the evidence which relates to the point on which the perjury is assigned, provided the witness can further swear, that he heard the whole examination, and that nothing was subsequently said to qualify the original statement. Unless he can do this, his evidence cannot be received."

(*Taylor on Evidence.*)

Reg. v. Prema Bhika, 1 Bom. Rep. 89.

A witness falsely deposing in another's name, should be charged with giving false evidence under section 193, and not with cheating by personation under sections 416 and 419 of the Penal Code.

Reg. v. Rewah Goallah, 5 S. W. R. Cr. R. 95.

A false statement by a witness as to his position or character ought not to be punished as severely as a false charge or a false claim.

Reg. v. Ross, 6 Madras Rep. 342.

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground, that it is an admission of the accused person inconsistent with his innocence.

As to the weight to be given to contradictory statements, the sound rule is, that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one, if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case, whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.

Reg. v. Bhutten Ram, 2 S. W. R. Cr. R. 63.

Corrupt intention in giving false evidence may be inferred from circumstances.

Reg. v. Shama Churn Roy, 8 S. W. R. Cr. R. 27.

The intention is an essential ingredient in the offence contemplated by section 218 of the Penal Code. The making of a false return of service of summons, is an offence punishable, not under section 181, but under section 193 of the Penal Code, and is cognizable by the Court of Session alone.

Reg. v. Sheikh Suffurudee, 1 Ind. Jur. O. S. 122.

The provision of the Penal Code (section 196) against using false evidence, is not ordinarily intended to apply to subornation of perjury. To establish an offence under section 196, it must be shown that the accused made some use of the false evidence after it was in existence.

Reg. v. Sheo Churn, 3 N W P. Rep. All. 314

A person who is called upon to answer to a charge of giving false evidence, should know exactly what is the false evidence imputed to him. A charge "that he on about the 15th April 1871 gave false evidence" is not sufficiently specific. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge with reference to which there should be a distinct finding and a distinct sentence.

Reg v. Siddhoo, 13 S. W. R. Cr. R. 56.

In a case of giving false evidence under section 193 of the Penal Code, the statement which the accused is charged with having made before the Magistrate should be clearly proved to have been made by him. The procedure in the case of a charge under this section pointed out.

Reg v. Soonder Putnaick, 3 S. W. R. Cr. R. 59.

The term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding, cannot extend beyond one-half of seven years.

Reg. v. Soonder Mohooree, 9 S. W. R. Cr. R. 25.

In a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put upon his trial, and only so much of the prisoner's statement ought to be set out as is necessary, in order to show the particular false statements relied on by the prosecution. The mere fact that a person has made a statement which contradicts a previous statement, is not itself necessarily sufficient to bring him within section 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must in each case be considered, before it can be held that the offence has been committed.

Reg. v. Venkata Chalam Pillai &

Where a witness was at the beginning of the day solemnly affirmed once for all to speak the truth in all the cases coming before the Court that day:—Held, that he might be

others, 2 Mad. Rep. 43.

convicted, under section 193 of the Penal Code, of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered.

Empress v. Mayadeb Gossami, 6 I. L. R. Calcutta, 762, 8 C. L. R. 292.

Failure to comply with the provisions of sections 182 and 183 of Act X of 1877 (Civil Procedure Code) in a judicial proceeding, is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under section 91 of Act I of 1872 (Indian Evidence Act) no other evidence of such deposition is admissible.

Empress v. Kassim Khan & Empress v. Mussamut Dahja, 7 I. L. R. Cal. 121, S. C. 8 C. L. R. 300 F. B.

Neither the words "shall answer all questions" in section 118 of the Code of Criminal Procedure (Act X of 1872), nor the words "shall be bound to answer all questions" in section 119 of the same Code, constitute "an express provision of the law to state the truth" within the meaning of section 191 of the Penal Code. Sections 118 and 119, are merely intended to oblige persons to give such information as they can to the Police, in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth. Nimchand Mookerjee's case, (20 S. W. R. Cr. R. 41) not followed.

Reg. v. Mahomed Hoomayoon Shaw, 13 B. L. R. 324 F. B. S. C. 21 S. W. R. Cr. R. 72.

Where a person was convicted of giving false evidence, upon an alternative charge in the form given in Sch. III of the Criminal Procedure Code (Act X of 1872); Held, by the majority of the Court (JACKSON and PHEAR, JJ., dissenting) that the conviction was good, notwithstanding the jury had not distinctly found which of the two statements charged was false.

Held, *per* JACKSON, J. that such a charge is bad, and further that an alternative finding upon such charge is invalid.

Held, *per* PHEAR, J. that although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction find specifically which branch of the alternative is true.

Jaddoonath Dutt, appellant, 2 C. L. R. 181.

Although a person under examination as a witness, is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of facts for fear of penal consequences, although without such a warning, he may make a false denial, and thereby become guilty of intentionally giving false evidence, his offence will not be deserving of severe punishment.

Empress v. Kodai Singh, 3 C. L. R. 527.

Under section 193 of the Indian Penal Code, it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment.

Sheikh Dabu in re, 6 C. L. R. 47.

Where the accused was charged under section 193 of the Penal Code with having given false evidence, in that he denied having made certain statements which he was alleged to have made to the Inspector of Police, that officer was examined and merely put in two documents containing the statements alleged as the records of what had taken place.

Held, that these documents being inadmissible in evidence under section 119 of the Code of Criminal Procedure (Act X of 1872), evidence ought to have been given as to what was actually stated by the accused to the Inspector of Police.

Kazi Chunder Mozoomdar v. Juggut Chundra Mozoomdar, 7 C. L. R. 330.

Quære :—Whether a statement on oath voluntarily taken in a proceeding where an oath is not necessary, comes within section 191 of the Penal Code, GARTH, C. J. :—An oath voluntarily taken in a proceeding where an oath is not necessary, would not by English Law, support an indictment for perjury, and I should doubt whether under the Penal Code, a statement upon oath, where the oath is not necessary, would come within the provisions of section 191.

Juggernath Sahai & another, appellants in re, 8 C. L. R. 236.

Persons giving false answers to questions put by a Police officer conducting an enquiry preliminary to a proceeding before a Court of Justice, may be convicted of giving false evidence, under sections 191 and 193 of the Indian Penal Code. Reg. *v.* Nimchand Mookerjee, 20 W. R. Cr. 41 followed.

Sundriah v. The Queen, 3 I. L. R. Mad. 254.

A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Sessions respectively, was convicted by the same Court of Sessions on a charge in the alternative, of giving false evidence either before the Magistrate, or before the Court of Session. Held, that the Court was precluded by section 473 of the Criminal Procedure Code, (Act X of 1870) from trying the charge.

Empress v. Kashmirilal, 1 I. L. R. All. 625.

Held, (STUART, C. J. dissenting) that an offence under section 193 of the Indian Penal Code, being an offence in contempt of Court, within the meaning of section 473 of Act X of 1872, cannot, under that section, be tried by the Magistrate before whom such offence is committed. Reg. *v.* Kultaran Singh, (I. L. R. 1 All. 129) and Reg. *v.* Jaga Mal, (I. L. R. 1 All. 162) overruled.

Per STUART, C. J :—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of section 471 of Act X of 1872.

Empress v. Mula, 2 I. L. R. All 105.

M. instigated Z. to personate C. and to purchase in C.'s name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C.'s name on such paper as the purchaser of it. M. acted with the intention that such endorsement might be used against C. in a judicial proceeding. Held, that the offence of fabricating false evidence had been actually committed, and that M. was properly convicted of abetting the commission of such offence. Reg. *v.* Ramsaran Chowbey. (H. C. R. N. W. P. 1872, p. 46) distinguished and observed on.

Reg. v. Ruttee Ram & others, 2 N. W P Rep. All. 21.

On a charge of perjury each of the accused should be separately charged and tried in respect of the alleged perjury.

Reg. v. Mata Dyal, 4 N W. P. Rep All. 6

The examination of a complainant in reference to the matter of his petition of complaint, is an investigation directed by law, and therefore a stage of a judicial proceeding. Consequently, if in the course of that examination, false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in section 193 of the Indian Penal Code.

Reg v Nunda, 4 N W P. Rep All 133

Facts showing that an accused person had dug a hole intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence.

Reg v. Shibdyal, 5 N W P Rep All. 188

The prisoner was convicted under section 195 of the Indian Penal Code, of fabricating false evidence with intent to procure the conviction of a certain person of an offence. The prisoner's act was committed in a most public manner, and was not calculated to lead to the conviction of the person, nor did it appear that the prisoner took any steps to secure his conviction. Held, that the conviction of the prisoner could not be sustained.

Imperatix v Irbasapa, 4 I L R. Bom 479.

A person who makes a false statement upon oath, before a Police patel acting under section 13 of Bombay, Act VIII of 1867, gives false evidence within the meaning of section 191 of the Indian Penal Code, and is punishable under section 193; but his trial for that offence requires no sanction, a Police patel not being a Criminal Court within the definition of section 4 of the Code of Criminal Procedure (X of 1872) (see section 468) although offences under Chapter X of the Indian Penal Code, committed before the same officer cannot be tried without a sanction (see section 467 of the Code of Criminal Procedure).

Reg. v. Bhairo Miser & others, 7 S. W. R. Cr. R. 51.

A conviction for false evidence, was upheld in a case where the false statement was to stop the prosecution of certain Brahmins on a charge of riot or dacoity and murder. The commitment and trial of several persons on separate charges, each man's statement forming a distinct offence approved.

Reg. v. Sheikh Tufain, 8 S. W. R. Cr. R. 26.

A prisoner's inability to say where his son was on the 4th Pous is no evidence on which to direct a jury to convict him of false evidence for saying that on the day previous (3rd Pous) his son was ill at home.

Dowlut Moonshee, appellant, 8 S. W. R. Cr. R. 95.

In charges of false evidence under section 193, Penal Code, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false.

Behary Lall Bose & others, case of, 9 S. W. R. Cr. R. 69.

The failure of the Civil Court in a case of perjury, to make a memorandum of the evidence of the accused when examined before it, does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court.

Reg. v. Moti Khowa 12 S. W. R Cr. R 31.

Where a person is charged with making two contradictory statements, it must be proved by direct evidence, that both statements were made, and there must be an enquiry as to which statement is untrue, and whether the accused wilfully made the statement which is supposed to be false, knowing it to be false.

Audheen Roy & others, case of, 14 S. W. R. Cr R. 24.

A conviction may be had for giving false evidence under section 193, Penal Code, even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Regulation XIX of 1814), but it must be proved that the false statement was made under the sanction of the law.

Gopal Mozumdar v. Hurro Soondery Boistomee, 16 S. W. R. Cr. R. 59, S. C. 8 B. L. R. Ap. 20.

A Sessions Judge has no authority under the law, to interfere with the order of a Magistrate allowing a prosecution for false evidence.

Sheebpershad Chuckerbutty & others, petitioners, 17 S. W. R. Cr. R. 46.

It would be very undesirable for the High Court, except under very peculiar circumstances, to entertain on the first instance an application to authorise a prosecution for perjury.

Reg. v. Ramlochun Sing & another, 18 S. W. R. Cr. R. 15.

The Magistrate before whom the offence of intentionally giving false evidence in a judicial proceeding is committed, may himself try and commit the persons so offending. *Per* GLOVER, J.:—It is a mistaken view of the law to suppose that prisoners in appeal, ought to have benefit of any doubt with reference to any portion of the evidence. The doubt shown must be of the strongest kind, before the Appellate Court should be justified in interfering.

Dinonath Burooa & others, case of, 18 S. W. R. Cr. R. 32.

The commitment of certain persons charged under section 193, Penal Code, with intentionally giving false evidence in a judicial proceeding, was held to be illegal in as much as the sanction of neither the Court before or against which the offence was committed, nor of some other Court to which such Court is subordinate, was given. It is not necessary, to constitute the offence of abetment, that the act abetted, should be com mitted.

Reg. v. Shib Prosad Giri, 19 S. W. R. Cr. R. 69.

A statement, untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court.

Reg. v. Nimchand Mookerjee & another, 20 S. W. R. Cr. R. 41.

It is not necessary, under section 194, Penal Code, that the false evidence which is given, should be evidence given in a Court of Justice. Such statement, if made to a Police Officer, would amount to the offence of giving false evidence as defined by section 191, taking section 118 of the Code (Act X of 1872) into consideration.

There can be no offence of the abetment of giving false evidence, unless the person charged with abetment intended not only that the statement should be made, but intended that the statement should be made falsely.

Reg. v. Gonowri, 22 S. W. R. Cr. R. 1.

To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of a charge.

The deposition of the prisoner given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition, that it was read to the witness, and was by him acknowledged to be correct, though held not to be quite satisfactory, (as the person who took down in English what the prisoner had said in Hindustani, was not examined as a witness, and the prisoner had no opportunity of cross-examining him) was admitted as a proper deposition, within the provisions of the Code of Criminal Procedure (Act X of 1872), and the memorandum was taken under section 80, Code of Criminal Procedure, as evidence of the facts stated in it, and as affording some evidence that the translation was correct.

Sufatoollah, petitioner, 22 S. W. R. Cr. R. 49.

A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class, was tried and convicted of that charge by that Magistrate, and the conviction was confirmed on appeal by the Sessions Judge. Held, that the jurisdiction of the Magistrate, was not barred by the operation of section 473, Act X of 1872, the giving of false evidence in the presence of a Court, not being an offence committed in contempt of the authority of the Court, within the meaning of that section.

The Magistrate's jurisdiction in such a case was, however, held barred by section 471 of the Code, the Magistrate being bound under that section; either to commit or send the case for enquiry to another Magistrate.

Reg. v. Dudraj Dosadh, 22 S. W. R. Cr. R. 83.

A Joint Magistrate, having directed a recusant witness in a trial before him to be put on his trial for giving false evidence, subsequently, on the 9th May, on hearing the statement of the witness confessing that what he had stated was false, and that he had wilfully withheld what he knew, recorded a proceeding stating, that the case would not be proceeded with, and directing the discharge of the accused witness.

Held, that as the Joint Magistrate could not himself try the case by virtue of section 473 of the Code of Criminal Procedure, (Act X of 1872) his proceeding of the 9th May, was either a part of an enquiry into a case triable by a Court of Session or of some proceeding before a Magistrate other than such inquiry in respect of an offence which the inquiring Magistrate was not competent to try, and that in either case, the Joint Magistrate had no authority to discharge the accused. When once a complaint of an offence, which cannot be legally compounded, is before a Magistrate, he is bound, (unless proceeding under section 146) to make a complete inquiry, and to see that the accused if guilty, is brought to punishment.

Reg. v. Mungul Dass, 23 S. W. R. Cr R. 28.

In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated to him. The document was not interpreted to the accused in the language in which it was given, or which he understood; nor was it read over in accordance with requirements of section 339, Code of Criminal Procedure (Act X of 1872) in the presence of the person then accused; Held, that the English record of the Magistrate was not legal evidence under the evidence Act, I of 1872, section 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.

Reg. v. Ramavtar Paure, 25 S. W. R. Cr. R. 5.

No special sanction is needed for the prosecution of a person for giving false evidence in a judicial proceeding.

Keerut Singh v. Narain Passee, 25 S. W. R. Cr. R. 14.

Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge.

Reg. v. Sarjan Miya & others, 25 S. W. R. Cr. R. 23.

In a prosecution for intentionally giving false evidence in a judicial proceeding, under the Penal Code, section 193, it is for the prosecution to show clearly that the prisoner's statements were false.

Reg. v. Oodun Lall, 3 S. W. R. Cr. R. 17.

A person who uses in Court false documents as true, besides swearing to their authenticity, may be convicted under section 196 of the Penal Code only, and not under section 471 also.

Reg. v. Aidrus Sahib, 1 Mad. Rep. 38.

The materiality of the subject matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding; and an indictment under sections 191—193 of the Penal Code, though it does not allege materiality, is good if it alleges sufficiently the substance of the offence.

Andy Chetty, prisoner, 2 Mad. Rep. 438.

The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. Held, that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.

Proceedings of 21st Feb. 1867, 3 Mad. Rep. Appendix 29.

When a party makes a false statement while legally bound by solemn affirmation, the fact that the statement, was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence. In this case, the Session Judge directed a verdict of acquittal on a charge of giving false evidence, on the ground that the prisoner had been implicated in a robbery, regarding which the false evidence assigned in the charge had been given. The High Court were of opinion that the Sessions Judge's direction was wrong. When the prisoner made the false statement, he was legally bound by solemn affirmation to state the truth, and even if the statement was one tending to criminate himself, that fact would not justify the acquittal. There is an exception to the proviso in section 32 of the Evidence Act, II of 1855, (now section 32 of the Evidence Act 1872) that no self-criminating answer which a witness, who has claimed to be excused, has been compelled to give, shall be used against him. It may be used "for the purpose of punishing him for wilfully giving false evidence upon his examination." The present case clearly falls within that Exception.

Proceedings of 15th March 1867, 3 Mad. Rep. Appendix 32.

In cases of giving false evidence a separate chage against each prisoner must be framed and separate trial held of each charge.

Vedamuttu, Appellant, 4 Mad. Rep. 185.

A Hindu, who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under section 193 of the Indian Penal Code. A statement made by a witness in a criminal trial, not upon oath or solemn affirmation, is not a declaration within the meaning of section 199 of the Penal Code, nor is the witness bound to make a declaration under section 191.

Proceedings of 4th Nov. 1868, 4 Mad. Rep. Rul. 18.

A conviction under section 181 of the Penal Code is good, though the offence fall within section 193. But a sentence under section 181 which awards no term of imprisonment is illegal.

Subbroya Oodian, Appellant, 5 Mad. Rep. 326.

The prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under section 19 of the Income Tax Act (Act IX of 1869) to a Tasildar. Held, that the Tahsildar was not an officer competent to receive such a petition, and that no offence was committed.

Proceedings of 1st May 1871, 6 Mad. Rep. Rul. 27.

The making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition.

Proceedings of 6th November 1873, 7 Mad. Rep. Rul. 28.

The Magistrate convicted accused of abetting the giving of false evidence in a judicial case proceeding before himself. Held that, as by the proceedings of 24th March 1873, the Magistrate could not have tried the person who gave false evidence, he could not try the abettor,

Radhajeebun Moostaffee, petitioner, 5 S. W. R. Cr .R. 8.

A case of perjury or forgery alleged to have been committed in a case before a Civil Court before the 1st January 1862, can be dealt with only under the old Procedure law (Act I of 1848), according to which the sanction of the Court before which the offence is alleged to have been committed, is necessary before criminal proceedings can be instituted.

Reg. v. Bhavanishankar Haribhai & 2 others, 5 Bom. Rep. Crown Cases, 55.

A person accused of giving false evidence in a stage of a judicial proceeding is entitled to have the specific charge made against him tried independently of a like charge against another person.

Reg. v. Dayalji Endarji, 8 Bom. Rep. Crown Cases, 21.

When an offence under section 193 of the Indian Penal Code is established, a conviction under section 181 is illegal. When the accused made on solemn affirmation a statement before an Income Tax Commissioner, which statement the accused knew, or had reason to believe, to be incorrect: *It was held* that such statement amounted to the offence of giving false evidence in a judicial proceeding, under section 193 of the Indian Penal Code, and was, therefore, not cognisable by a Full Power Magistrate, as it could not be treated as constituting an offence triable under section 181 of the Indian Penal Code (making a false statement to a publict servant).

Reg. v. Ravji valad Taju, 8 Bom. Rep. Crown Cases, 37.

The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having as a witness therein made, on solemn affirmation a false statement. The proceedings in the trial at which the alleged false evidence was given, were subsequently annulled, in consequence of the sanction for the prosecution being insufficient. Held, that the conviction of the accused must be reversed, as the false statement was not made in a stage of a judicial proceeding. The proceedings in a criminal trial; when necessary to be proved, should be proved by their production,

Reg. v. Navranbeg Dulabeg, 10 Bom. Rep. 73.

The offence of intionally giving false evidence in a judicial proceeding, cannot be tried by the Magistrate before whom the false evidence is given; this offence, being an attempt to pervert the proceedings of a Court to an improper end, is a contempt of its authority (sections 435, 436, 471, 472, and 473 of the Code of Criminal Procedure, Act X of 1872).

Reg. v. Jibhai Vaja, 11 Bom. Rep. 11.

In a non-judicial proceeding, the object of which is to discover the writer of a scandalous petition, it is not competent for the Magistrate conducting the proceeding to administer an oath. The High Court reversed a conviction for giving false evidencc where an oath was administered under the above circumstances.

Reg. v. Ramajirav Jivba Jirav & another, 12 Bom. Rep. 1.

The making up falsely of accounts with the intention of producing them before a Forest officer, not empowered by law to hold an investigation and take evidence, is not a fabrication of false evidence within the meaning of section 193 of the Indian Penal Code.

Reg. v. Bakhoree Chowbey, 5 S. W. R. Cr. R. 98.

Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence.

Reg. v. Hurdyal, 3 B. L. R. A. Cr. 35.

The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. Held, that such witness was guilty under section 193 and not under section 194 of the Penal Code, as he did not know that he would cause a conviction for murder.

Reg. v. Mudun Mundle, 16 S. W. R. Cr. R. 61.

There is no necessity, under section 198 Code of Criminal Procedure (Act XXV of 1861) for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement.

Reg v. Nusseeroodeen Shazwal, 11 S. W. R. Cr. R. 24.

Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under section 181 of the Penal Code, but should commit to the Sessions under section 193 of that Code.

Reg. v. Ootur Narain Singh, 8 S. W. R. Cr. R. 79.

Where a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained, under section 169 of the Code of Criminal Procedure (Act XXV of 1861) is strictly legal.

Reg. v. Baijoolall, 1 I. L. R. Calc. A. Cr. 450.

Although section 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by section 471 of the Criminal Procedure Code (Act X of 1872) the whole law as to the procedure in cases within those sections is now embodied in section 471 of the Criminal Procedure Code. In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favour, but on the important issue as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case, he gave judgment for the defendant, without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate with a view to his enquiring whether or not they had voluntarily given false evidence in a judicial proceeding, and he further directed the Magistrate to enquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that, as the witnesses were the plaintiff's servants, he must personally have influenced them, and also to enquire whether the plaint which the plaintiff had attested, contained averments which he knew to be false. On a motion to quash this order, held, that under section 471 of the Criminal Procedure Code, the Judge has no power to send a case to a Magistrate except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground, (*i. e.*, ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire, and that the order was bad because the Judge had made no preliminary enquiry and because it was too vague and general in its character.

Empress v. Rameshar Rai, 1 I. L. R. All. 379.

Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, held, that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under section 193 of the Indian Penal Code, and of voluntarily assisting in concealing stolen property under section 414, Indian Penal Code.

Reg. v. Balkissen, 3 N. W. P. Rep. All. 166.

A Court cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence.

The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under section 193.

Reg v. Jamurha & others, 7 N. W. P. Rep. All. 137.

Where several persons are accused of having given false evidence in the same proceeding, they should be tried separately.

Empress v. Anant Ram & others, 4 I. L. R All. 293.

A. S. B. D. and P. were jointly tried, A. in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S. B. D. and P. on charges of giving false evidence in the same judicial proceeding as to such payments. The Court (STRAIGHT, J.) being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.

A certain alleged mocurrari tenure having been set aside by a Civil Court, the person who had claimed to hold such tenure in depositing money in Court, in a petition stated, that the deposit was in respect of the mocurrari tenure, whereupon he was charged and convicted under section 193 of the Indian Penal Code with fabricating false evidence. Held, that the conviction was bad.

Ram Mohun Mookhopadhya in re, 10 C. L. R. 433.

A Sessions Judge is competent, under section 435, Code of Criminal Procedure (Act XXV of 1861) to order the committal of a person accused of giving false evidence after the discharge of such person by the Magistrate, section 359 notwithstanding (KEMP, J. dissenting).

Reg. v. Bhohisan Mahatoon, S. W. R. 1864, Cr. R. 3.

Held by the majority of the Court that a sentence of 5 years' imprisonment was not excessive in the case of a man convicted of making a false statement in a judicial proceeding, with the intention of defeating the ends of justice by procuring the acquittal of a guilty person.

Reg. v. Anoo & another, S. W. R. 1864, Cr. R. 16.

The power of convicting on alternative charges of giving false evidence is open to great abuse.

Proceedings of 15th February 1873, Weir 77.

Where the perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried.

Proceedings of 30th November 1874, Weir, 78.

Proceedings of 23rd Sept. 1880. Weir, 79.

Where the conviction is based in two conflicting statements, it is desirable to record evidence as to the object with which the offence was committed, *i. e.*, in what respect the alleged false statement bore on the matter under enquiry.

Aijavaiyan alias Chidambara Aiyan, accused. Weir, 79 & 546.

In the matter of determining objections under section 14 of Madras, Act III of 1878, a Collector, or an officer exercising the powers of a Collector under the Act, has the same power as a Civil Court to enforce the attendance of, and to examine witnesses on oath or affirmation. A false statement made during such enquiry will therefore render the maker of it liable to prosecution for an offence under section 193 of the Penal Code.

Ranee Asmedh Koonwar v. W. Tayler, S. W. R. 1864 Civ. Rul. 15.

There is nothing in section 169 of the Code of Criminal Procedure Act, (XXV of 1861) which gives a Judge, not sitting in appeal, any original jurisdiction to entertain a charge of giving false evidence before another Court. No other Court than that before which false evidence is given, can direct a prosecution in respect thereof. In a prosecution for false evidence, there must be some specific charge of making some particular and specific false statement, and some direct evidence that such specific statement was false.

Empress v. Niaz Ali & others, 5 I. L. R. All. 17.

In prosecutions for giving false evidence under section 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue. Reg. *v.* Jackson, (1 Lewis, C. C. 270) Reg. *v.* Wheatland, (8 C. and P. 238) and Rex *v.* Harris (5 Barn. and Ald. 926) referred to. Section 455 of Act X of 1872 (Criminal Procedure Code) is no authority for framing against a person, accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties.

Held Therefore, where three persons were committed for trial jointly charged with "having on or about the 26th September, 1881, or the 18th October, 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under section 193

of the Indian Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad because it did not distinctly and in terms allege which of the statements was false; that assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons, specifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such person was not sustainable, there being no sufficient evidence that either of the statements was false.

Per STRAIGHT, J.:—.....It will be convenient now to examine the terms of the charge sheet prepared by Mr. Shaw upon which the respondents were committed, to the Court of Session. "I, H. Shaw, Magistrate of the first class, hereby charge you Niaz Ali, Rahim-ul-lah, and Ider as follows:—That you on or about the 26th September, 1881, or the 18th day of October, 1881, at Moradabad, being legally bound upon oath to state the truth, did knowingly on those days, *regarding the same subject*, make *contradictory statements upon oath*, in saying on the 26th September, 1881, that you saw Nawazish Husain Khan sell a stamp of Rs. 25 value to Mubarik Husain, and on the 18th October, 1881, saying you did not see, but heard of the transaction, that you gave false evidence voluntarily, and thereby committed an offence punishable under section 193 of the Penal Code, and within the cognizance of Court of Session."

Now in the first place the charge was open to objection for being single and joint against the three respondents instead of several and specific in regard to each of them. In prosecutions for giving false evidence under section 193 of the Penal Code, the case of each person accused should be separately inquired into by the Magistrate, and if committed to the Sessions Court, separately tried by the Judge. It was wholly erroneous to include them in one joint charge. But apart from this fatal objection, the Magistrate avowedly committed the case upon the extraordinary assumption, that because the respondents had made contradictory statements they must necessarily be guilty of the offence of giving false evidence. This is a very mistaken view of the law, and it is right it should be corrected, for it is by no means peculiar to Mr. Shaw, but on the contrary prevails to a considerable extent in these Provinces among magisterial officers. It is not of itself sufficient to warrant a conviction either for giving false evidence or making a false oath, that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence, independent of the other contradictory statement, to establish the falsity of that which is impeached as untrue. The remarks of HOLROYD, J. in R. *v.* Jackson are valuable upon this point: "Although you may believe that on one or the other occasion the prisoner swore what was not true, it is not a necessary consequence that he committed perjury, for there are cases

in which a person might very honestly and conscientiously believe and swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time, be convinced that he was wrong, and swear to the reverse without meaning to swear falsely either time. Again, if a person swears one thing at one time, and another at another, you cannot convict, where it is not possible to tell which is the true and which is the false." GURNEY, B. also took a similar view in the case of Reg. *v.* Wheatland upon which and a decision of the Court of King's Bench in Rex *v.* Harris, Mr. Greaves in Russell on Crimes, Vol. III, pp. 82 and 23, notes, records some valuable comments. Section 455 of the Criminal Procedure Code (Act X of 1872) is no authority for the form of charge prepared by the Magistrate in the present case, and the word "alternative" as used in the sections means, that where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated, as will guard against his escaping conviction through technical difficulties. I have no hesitation whatever in declaring, that the charge framed by Mr. Shaw was erroneous in point of law, as being joint against all the respondents instead of several, and for not distinctly and in terms alleging which of their statements was false. Assuming that a committal upon so faulty a charge could be allowed to stand, the Sessions Judge should have prepared a fresh charge against each of the respondents, specifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately. This, however, he did not do, and his procedure, were it necessary to enter into the point, would thus be open to serious objection.

From what I have said in the earlier part of this judgment it is clear, that no charge could have been properly preferred or sustained as to the statements made on the 26th September. Indeed, as to the respondent Ider, I have already pointed out, that he did not distinctly assert, that the stamp was bought in his presence. As to the evidence given by the respondents Niaz Ali and Rahim-ul-lah in the case of Nawazish, beyond their own contradictory assertions on the 26th September, there was other proof against them, and as standing alone, it was impossible to say which of them was true and which was false, as no legal charge could be framed or sustained against them or either of them. Upon the face of the depositions there is nothing whatever to show whether they were or were not present when the stamp was bought by Mubarik Husain, nor was that person called as a witness in the case, though he could have thrown important light upon it. In my opinion no charge of giving false evidence under section 193 of the Penal Code against any or either of the respondents was capable of being maintained for want of sufficient proof, and that while it was imperative to allege one or other of their statements as being false, it was equally necessary to establish its falsity by some confirmatory evidence other than that of their contradictory statements. If the prosecution could not succeed under section 193, it was equally clear that it must fail under section 181, for the falsity would in that case have to be proved with equal exactness. Looking at this appeal in its entirety, and bearing in mind the several matters to which attention has been called, I am very clearly of opinion that it should be dismissed.

Nathu Sheikh v. The Queen-Empress, 10 I. L. R. Calc 405.

In order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. The law laid down by the Full Bench in the case of the Empress *v.* Kassim Khan, (I. L. R. 7 Calc. 121), has been altered by the provisions of section 161 of the Code of Criminal Procedure (Act X of 1882) and a witness who makes a false statement to a Police officer in reply to a question which he is bound to answer, would be guilty of intentionally giving false evidence. When four persons were accused of having given false evidence in the same proceeding, and the Sessions Judges, while professing to try each accused separately, heard the evidence of the witnesses only once. Held, that this was substantially trying the four prisoners together, and was an improper mode of procedure.

Reg. v. Rajcoomar Bannerjee, Ind. Jur. O. S December 1862.

Section 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. The term "fabrication" in section 193 refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver, and to prove, that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by section 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence.

Habibbullah v. Queen-Empress, 10 I. L R. Calc. 937.

A prisoner was convicted on an alternative charge in the form provided by Schedule 5 XXVIII, II (4) of the Criminal Procedure Code (Act X of 1882) of having given false evidence, such evidence consisting of contradictory statements contained in one deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. Held, (NORRIS, J. dissenting) that section 233 of the Criminal Procedure Code, did not affect the matter and that the conviction was good.

Semble *per* WILSON, J. :—The decision in the Queen *v.* Bedoo Noshyo, (12 S. W. R. Cr. 11) though a guide to the discretion of Courts in framing and dealing with charges, was not intended to, and does not affect the law applicable to the matter.

FALSE INFORMATION.

Reg. v. Cheetom Chowkeedar, 1 S. W. R. Cr. R 18.

A prisoner's intention is immaterial to his conviction under section 203 of the Penal Code of having given false information respecting an offence committed.

Reg. v. Hurdut Surma, 8 S. W. R. Cr. R. 68.

Where a person is charged (section 218, Indian Penal Code) with framing a report incorrectly or (section 201, Indian Penal Code) giving false information, with intent to save offenders from punishment, the issue to be tried is not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoner in respect to their guilt. Police diaries cannot be legally used as substantive evidence or read to the jury.

Abdool Luteef, petitioner, 9 S. W. R. Cr. R. 31.

To constitute an offence under section 182, Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge.

Reg. v. Joynarain Patro & others, 20 S. W. R. Cr. R. 66.

To justify a conviction for giving false information with respect to an offence under section 203 of the Penal Code, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew or had reason to believe that the offence had been actually committed.

Reg. v. Daria Khan & another, 2 N. W. P. Rep. All. 128.

Statements made by a prisoner for the purposes of his defence, cannot be held to be "information given to a public servant" within the meaning of section 182 of the Indian Penal Code.

Reg. v. Hurree Ram, 3 N. W. P. Rep. All. 194.

No ground for a complaint of giving false information to a public servant under section 182 of the Indian Penal Code exists on the part of any one but the public servant against whom the offence was committed.

Reg. v. Periannan & Reg. v. Naraina, 4 I. L. R. Mad. 241.

Section 182 of the Indian Penal Code, does not apply where the public servant misinformed is only competent to pass and passes on information, and the power to be exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled.

Virasami Mudali v. The Queen, 4 I. L. R. Mad. 144.

To make a false entry in a diary kept by a Government servant, and sent to his official superior in pursuance of a departmental order, is an offence within the meaning of section 177 of the Indian Penal Code.

Proceedings of 21st Decr. 1871. 6 Mad. Rep. Rul. 48.

Certain vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact, that the returns furnished were false, but acquitted the defendants, on the ground that they were not "legally bound" to furnish information within the meaning of section 177 of the Penal Code. Held, that section 177

embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case, were public servants, and part of the duties which they undertook, was to make true returns to their official superior. To make false returns, was therefore an offence.

Empress v. Madho, 4 I. L. R. All. 498.

M. falsely informed the Collector of a District that certain zamindars had usurped possession of certain land belonging to Government, with the intent to give trouble to such zamindars, and waste the time of the public authorities. Held, that, inasmuch as such information was no more than an expression of a private person's belief, that the Collector might, if he chose, sustain a civil suit with success against such zamindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector, or as a Magistrate, to the injury or annoyance of such zamindars, or that he would have done anything he ought not to have done, M. had not committed an offence under section 182 of the Indian Penal Code.

Proceedings of 20th Nov. 1862. Weir, 46.

Section 177 of the Penal Code, embraces every case in which a subordinate officer seeks to impose false information upon his superior.

Proceedings of 7th Nov. 1877. Weir, 48.

A conviction of a village kurnum and of a village monigar of the offence of having furnished false information in relation to applications for lands to their superior revenue officer under section 167 of the Penal Code, upheld as a conviction under section 177 of the Penal Code.

Proceedings of 31st Jan. 1880. Weir, 49.

To support a conviction under section 177, it must be established 1st, that the accused are legally bound to furnish information; 2nd, that the information furnished is false.

It must not be assumed that village officers, *qua* village officers, are legally bound to furnish information upon every matter in regard to which information is asked by their superiors, nor even upon every matter more or less remotely connected with the duties of their office.

Proceedings of 19th Nov. 1880. Weir, 50

It is not necessary to prove an intention to defraud in order to justify a conviction under section 177 of the Indian Penal Code. It is enough to show that the information furnished as true, was either known to be false, or not believed to be true.

Proceedings of 3rd Sept. 1881. Weir, 52

A refusal by an accused person to sign a statement made by him, as required by section 346 of the Code of Criminal Procedure, is not an offence under this section. The signature of the accused is required by section 346 of the Code of Criminal Procedure for the protection of the accused, and not for the purpose of imposing an obligation enforceable under section 180 of the Penal Code.

Proceedings of 26th Nov. 1867. Weir, 53.

A conviction under section 181 may be sustained, though the facts charged may constitute an offence under section 193.

Empress v. Radha Kishan & another, 5 I. L. R. All. 36

K. made a report at a police-station accusing R. of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter, that in their opinion the offence was not established, the Magistrate ordered the case to "shelved." K. then preferred a complaint to the Magistrate again accusing R. of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R. with the sanction of the police authorities, instituted criminal proceedings against K. under section 182 of the Penal Code, in respect of the report which he had made at the police station, and K. was convicted under that section.

Held that, before proceeding against K. the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in the Government *v*, Karimdad, (6 I. L. R. Calc. 496), concurred in. Held also, that K.'s conviction under section 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of R., the application of section 182 and the institution of prosecutions under it, being limited to the public servant against whom the offence has been committed, or to his official superior, as mentioned in section 467 of Act X of 1872, and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if K.'s complaint was false, his offence was against R., and not against the public servant to whom the complaint was made, and fell within section 211 of the Penal Code.

Ordered that the complaint made by K. should be investigated.

FALSE PERSONATION.

Reg. v. Bitoo Kahar, 1 Ind Jur. O S. 123.

To establish a charge under section 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. Under section 205 of the Penal Code, it is criminal to personate an imaginary person.

Reg. v. Luthi Bewah & others, 2 B L. R. A. Cr. 26.

A vendor proceeded, in company with three persons to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's office; one of them there proceeded to personate the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. Held, on revision that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under sections 92 and 94 of the Registration Act, and not under the Penal Code.

Reg. v. Mohim Chunder Sil, 16 S. W. R. Cr. R. 42.

Where the accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl really was of the Sudra caste, it was held that he was guilty of cheating by false personation under section 416 of the Penal Code.

Reg. v. Narain Achar, 8 S. W. R. Cr. R. 80.

It is necessary to a conviction for false personation, under section 205 of the Penal Code, that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual held, under the circumstances of the case, to be insufficient to show any intention of falsely personating such person.

Reg. v. Sheogolam Dass, 6 B. L. R. 692; S. C. 15 S. W. R. Cr. R. 58.

The Sessions Judge has jurisdiction to try a case of abetting false personation of a witness before a Registrar of assurances, under section 95 of the Registration Act (XX of 1866). The word "instituted" in the section should be construed to mean "commenced."

Contra Reg. *v.* Ashanulla, (6 B. L. R. 693 note); (13 S. W. R. Cr. R. 15.)

Suppakon & others Ex-parte, 1 Mad. Rep. 450.

Fraudulent gain or benefit, is not an essential element of the offence of false personation under section 205 of the Penal Code, and a conviction for false personation may be upheld even where the personation is with the consent of the person personated.

Kadar Ravuttan & Ayangana Ravuttan, appellants, 4 Mad. Rep. 18.

To constitute the offence of false personation under section 205 of the Penal Code, it is not enough to shew the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual. Reg. *v.* Bhitto Kuhar, (1 Indian Jurist, 123) dissented from.

Proceedings of 16th Aug. 1881. Weir, 31.

Where a village revenue officer, in the absence of the village Magistrate, exercised the powers of a village Magistrate, and it was found that he acted in good faith: Held, that a conviction under the section (I. P. C. 170) could not be sustained.

Ignorance of law is evidence of a mental condition, and where the offence charged requires the existence of a certain knowledge, the offence is not committed by one who acts without that knowledge.

FORGERY.

Reg. v. Azimooden & another, 11 S. W. R. Cr. R. 15.

A deed of divorce is a "valuable security" within the meaning of section 30 of the Penal Code. The presenting of a forged document of such a nature for registration and obtaining registration would be "using" within section 471 of that Code.

Reg. v. Broond Shahoo alias Chundra Chatterjee, 7 S. W. R. Cr. R. 112.

In all forgery cases sent up in appeal, the particular paper or papers said to have been tampered with should be readily accessible, and should be put with the Sessions record, instead of being buried in the record of the committing officer.

Reg. v. Burjo Barrick, 5 S. W. R. Cr. R. 70.

A person who consents to act under a mooktearnamah, and attaches his own name in token of such consent, does not thereby become a maker of the mooktearnamah and a forger if the mooktearnamah turns out to have been forged.

Reg. v. Denonath Gangooly, 4 S. W. R. Cr. R. 25.

A Judge of a Small Cause Court may enquire into a charge that a decree was passed by his predecessor without the plaintiff's knowledge and on a forged document.

Reg. v. Hatim Moonshee alias Mahomed Hatim, 8 S.W. R. Cr. R. 11.

Where an intention to use a forged document, if necessary, was inferred from the facts of the case, and from the conduct of the prisoner.

Reg. v. Enaet Hossein, 5 S. W. R. Cr. R. 43.

In a case of filing a forged vakalutnamah in a Civil Court before January 1st, 1862, the prosecution can only proceed in the ordinary way, *i. e.*, by way of commitment by a Magistrate on the complaint of the party aggrieved.

Reg. v. Gyanee Raur, 6 S. W. R. Cr. R. 78.

The signing of a vakalutnamah in the name of co-decree-holders, without their authority to do so, and delivering it to a vakeel, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of section 463 of the Penal Code.

Reg. v. Hemoruddi Mundul, 9 S. W. R. Cr. R 22.

In a case in which the accused was charged with dishonestly using as genuine a pottah which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge.

Reg. v. Jaha Nix, 8 S. W R. Cr. R. 81.

There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under section 471 of the Penal Code.

Gunga Narain Sircar v. Azeezoonissa Beebee, 5 S. W. R. Mis 18.

No appeal lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it.

Radha Jeebun Moostaffee, petitioner, 5 S. W. R. Cr. R. 8.

A case of perjury or forgery alleged to have been committed in a case before a Civil Court before January 1st, 1862, can be dealt only under the old procedure law (Act I of 1848) according to which the sanction of the Court before which the offence is alleged to have been committed is necessary before criminal proceedings can be instituted.

Reg. v. Goluck Chunder and Teluck Chunder, 13 S. W. R. Cr. R. 16.

Where several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that under section 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals in their possession were for the purpose of committing one particular forgery.

Reg. v. Kishoree Mohun Dutt, 17 S. W. R. Cr. R. 58.

A Judge has every right to draw the attention of the jury to anything which appears to be a palpable alteration or blot on the face of a document alleged to be forged. Prisoners should name their witnesses at the commitment. The offence of altering one part of a document executed in two parts, for the mutual security of both the parties concerned, deserves to be severely punished.

Reg. v. Kristo Soonder Deb, 2 S. W. R. Cr. R. 5.

Counterfeit seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently.

Reg. v. Mohesh Chunder Archarjee & another, 6 S. W. R. Cr. R. 20.

When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery, or of using as genuine a false document, or abetting forgery.

Reg. v. Nawab Sing, 3 B. L. R. A. Cr. 9.

A specially registered bond was presented before the Small Cause Court Judge for execution, under section 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence, or making further enquiry, set aside the decree and sanctioned the prosecution under section 170 of the Criminal Procedure Code, (Act XXV of 1861). Held, that he was justified in sanctioning the prosecution, but not in setting aside the decree.

Reg. v. Nujeebutoollah, 9 S. W. R. Cr. R. 20.

It must be proved that the accused practised deception, so as to prevent a person from knowing the nature of the document, before the accused can be found guilty under section 464 of the Penal Code of making a false document.

Reg. v. Nujum Ali, 6 S. W. R. Cr. R. 41.

A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance, produced only a copy of it.

Reg. v. Prosonno Bose, 5 S. W. R. Cr. R. 96.

A conviction may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.

Reg. v. Ram Gopal Dhur, 10 S. W. R. Cr. R. 7.

A conviction for forgery under the Penal Code, cannot be had, unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made.

Reg. v. Shifait Ali, 2 B.L.R. A. Cr. 12, S. C. 10 S. W. R. Cr. R. 61.

To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published, or made in the name of a really existing person. A writing which is not legal evidence of the matter expressed, may yet be a document within the meaning of section 29 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter.

Dinobundo Chuckerbutty, petitioner, 5 S. W. R. Mis. 6.

Under section 170 of the Code of Criminal Procedure, (Act XXV of 1861) any Civil Court which has the power of calling before it the proceedings, and evidence of a suit in which forgery is alleged to have been committed, may, if satisfied after a preliminary enquiry that the charge is proper for investigation, give its sanction to the charge being entertained and investigated by the Magistrate, notwithstanding that the Subordinate Court by whom the suit was being tried, refused its sanction to the prosecution.

Reg. v. Sheikh Golam Mustuffa, 3 S. W. R. Cr. R. 29.

The accused was charged with forgery of a hibbanamah, and of the Kazee's certificate of attestation thereon, and with using as genuine the false hibbanamah, and certificate. Held by SETON-KARR and JACKSON, JJ., that it was the duty of the Judge, instead of leaving the question as to the forgery of, and using as genuine the hibbanamah to be decided by a competent Court, to have tried that question himself. Held by SETON-KARR and GLOVER, JJ., that the accused was entitled to an acquittal on the charge of forgery, as there was no evidence at all; and on the second charge, as the evidence was weak, and the probabilities wholly in the prisoner's favour.

Reg. v. Rughoo Barrick, 11 S. W. R. Cr. R. 44.

The false alteration of a Police diary by a head constable was held to fall under section 471, Penal Code, as the forgery of a document made by a public servant in his official capacity. Had the entry been originally false, the conviction might have been under section 218.

Reg. v. Banessur Biswas, 18 S. W. R. Cr. R. 46.

Held, that where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under section 468 of forgery with intent to cheat, instead of under section 465 of simple forgery.

Reg. v. Dwarkanath Ghose, 20 S. W. R. Cr. R. 49.

Where the accused, a mohurrir in the Registry office, was charged with making false endorsements of registry on the back of certain deeds, which endorsements were signed by the Registrar, it was held that, before he could be convicted of forgery under Part 3, section 464, Penal Code, it must be shown that the Registrar, in consequence of deception practised upon him by the accused, did not know the contents of the documents he was signing.

Jugganlall, Appellant in re, 7 C. L. R. 356.

Section 466 of the Indian Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate, or other document, is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer.

The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under section 465 of the Indian Penal Code. Held, on appeal, that the accused ought properly to have been convicted under section 192 of the Code; the provisions of that section not being confined to false evidence to be used in judicial proceedings.

Reg. v. Lal Gumul, 2 N. W. P. Rep. (All.) 26.

Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Indian Penal Code.

Reg. v. Nuzur Ali, 6 N. W. P. Rep (All) 39.

Convictions under section 471 of the Indian Penal Code and section 474 cannot stand together.

Reg. v. Jageshur Pershad, 6 N. W. P. Rep. (All.) 56.

The subsequent falsification of a Roznamcha Bahi kept in the office of a Deputy Inspector of Schools by the mohurrir in charge thereof, for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, held not to fall within the definition of forgery as given in the Indian Penal Code.

Reg. v. Padala Venkatasani & another, 3 I. L. R. Mad. 4.

To prepare in conjunction with others a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such a false document do not constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence.

Empress v. Shankar, 4 I. L. R. Bom. 657.

Falsification of a record, made in order to conceal a previous act of negligence not amounting to fraud, does not amount to forgery within the meaning of sections 463 and 464 of the Indian Penal Code (Act XLV of 1860).

Reg. v. Naro Gopal, 5 Bom. Rep. Crown Cases, 56.

The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorise the delivery of moveable property, is not punishable under section 467 of the Indian Penal Code.

Reg. v. Gangaram Malji, 6 Bom. Rep. Crown Cases, 43.

The prisoner was charged under section 471 of the Indian Penal Code, with fraudulently using as genuine a forged document, and having been tried before a Sessions Judge and jury, was convicted of that offence. The Session Judge, considering the forged document to be of the nature of those specified in section 467 sentenced the prisoner to 10 years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in section 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be re-tried.

Reg. v. Bhavanishankar et al., 11 Bom. Rep. 3.

A. signed B.'s name to petitions presented by G. to the Mamlatdar requesting his summary assistance under Regulation XVII of 1827, for the recovery of rents from B.'s tenants. Held, that even if A. had no authority from B. to sign his name, and if A. wished to deceive the Mamlatdar into the belief that it was B. himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to A. or B. A.'s act did not constitute forgery within the meaning of the Indian Penal Code. Avoidance of litigation is no wrongful loss to Government.

Reg. v. Parbhudas Ambaram & others, 11 Bom. Rep. 90.

Section 11 of the Indian Evidence Act should not be construed in its widest signification, but considered as limited in its effect by section 54 of the Act. So construed, section 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction), to prove the existence of another unconnected crime, even though it be cognate. Accordingly, the possession by an accused person of a number

of documents suspected to be forged is no evidence to prove that he has forged the particular document, with the forgery of which he is charged:

Per WEST, J.:—Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was in fact, executed by that person, is not admissible, nor even would a judgment, founded upon such a note, be so: sections 43 and 153 of the Indian Evidence Act.

WEST, J.:—"On consideration, I am of opinion that the bundles of documents found in the houses of four of the accused, and alleged to be forgeries, or inchoate forgeries, were improperly admitted as evidence in this case. Section 11 of the Evidence Act is, no doubt, expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connexion with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connexions of human affairs are so infinitely various and so far reaching, that thus to take the section in its widest admissible sense, would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of a law of evidence is to restrict the investigations made by Courts within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission, on all occasions, of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the inquiry proceeded. That such an extensive meaning was not in the mind of the legislature, seems to be shown by several indications in the Act itself. The illustrations to section 11 do not go beyond familiar cases in the English Law of Evidence. The possession by an accused of several other articles deposed to have been stolen, would, no doubt, have some probative force on the issue of whether he had received the particular articles which he was charged with having dishonestly received, and the receipt or possession of which he denied altogether, yet, in the first illustration to section 14, it is set forth as a preliminary to the admission of testimony as to the other articles that, "It is proved that he was in possession of [the] particular stolen article." The receipt and possession are not allowed to be proved by other apparently similar instances, only the guilty knowledge which can be inferred satisfactorily through a conscious or unconscious application of the law of probabilities from a multiplication of the fractions representing in each case the ratio of probable ignorance to probable knowledge of how the goods had been come by. .... What, however, is to my mind most conclusive, is section 54. That a man has a notoriously bad character, may very often, when taken "in connexion with other facts * * * make the existence * * * of a fact in issue * * * highly probable," yet this is declared irrelevant, except when evidence of good character has been given. But, again, if the bad character has been reduced to legal certainty by a conviction, evidence of the conviction is admissible. The conviction admits practically of no dispute, but evidence, merely tending to establish another offence, may, and generally will, be

met by counter-evidence raising unmanageable collateral questions. It may be remarked, too, that the case of a previous conviction being one covered and exceeded by the terms of section 11 in their widest extension, its subsequent specification shows that the Legislature did not intend those terms to be thus taken, and that the provision for admitting evidence of a previous conviction amounts, as an exact indication of how far in this direction the Legislature meant to go, to an implied exclusion of matters having a remoter and more disputable bearing on the issues under trial, such as, the particular facts on which the previous conviction was founded. And if this reasoning applies to such matters, it must apply *a fortiori* to those which are evidence not of a crime actually proved, but only of one suspected. The extent of the earlier enactment in this direction is restricted by the more specific provision for the later one.

In the English law, rules, substantially identical with those embodied in section 14 and its illustrations, have not been thought inconsistent with others corresponding to the construction which, I think, ought to be put upon section 11 of the Indian Evidence Act.

"In criminal proceedings the necessity is stronger, if possible, than in civil, of strictly enforcing the rule that the evidence is to be confined to the point in issue; for, where a prisoner is charged with an offence, it is of the utmost importance to him that the facts, laid before the jury, should consist exclusively of the transaction which forms the subject of the indictment, which alone he can be expected to come prepared to answer." 3, Russel on Crimes, 279. Hence, where * * * the evidence appears to refer to more than one distinct unconnected felony, it is usual for the Judge in his discretion to call upon the Counsel for the prosecution to select one felony, and to confine the evidence to that particular charge. Thus on an indictment * * * for receiving several articles, if it appear that they were received at different times, the prosecutor may be put to his election" (Ibid, 280) although (page 28) evidence may be given of all the receipts for the purpose of proving guilty knowledge." This is the rule of section 14, standing side by side with the rule of section 11 as I construe the latter, and when several offences are so connected that proof of one can be arrived at through evidence going to prove the others, the evidence is not on that account excluded, In Rex *v.* Ellis (6 Barn and Cress, 145) it is said: "Generally speaking, it is not competent to a prosecutor to prove a man guilty of one felony by proving him guilty of another unconnected felony, but where several felonies are connected together and form part of one entire transaction, the one is evidence to show the character of the other." In Rex *v.* Crocker (2 Leach, 987) a charge of forging one promissory note was supported by evidence that another one found in the prisoner's pocket-book was forged. The evidence was admitted by the Judge at the assizes, but the prisoner was afterwards released on a case submitted to the twelve Judges, and it was understood that they thought the evidence inadmissible: 2, Russell on Crimes, 816, 836. Thus, if a fact has a direct probative force, it is not excluded by the English rule; but if its force is merely mediate through its tendency to prove another cognate offence, it is excluded. I do not think the rule in the Indian Evidence Act was intended to go beyond this. There must always be room for the exercise of discretion when the relevancy of testimony rests

upon its effect towards making the affirmative or negative of a proposition "highly probable," and with any reasonable use of this discretion, the Court ought not to interfere, but it appears to be as illegal now, as before the Evidence Act was passed, to admit evidence of crime A. in order to prove the cognate but unconnected crime B."

Reg. v. Mohesh Chunder Sircar, 3 S. W. R. Cr. R. 13.

The offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law.

Empress v. Kherode Chunder Mozumdar & others, 5 I. L. R. Calc. 717; S. C. 6, C. L. R. 118.

The offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine, a document which he knew to be a forged document, is one cognizable under section 471 of the Penal Code, Such accused should, therefore, be charged under that section, and not under section 196 of the Code. Reg. *v.* Oodun Lall, 3 S. W. R. Cr. R. 17 disapproved of.

Empress v. Mir Ekrar Ali, 6 I. L. R. Calc. 482.

Where the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently" within clause 2, section 464 of the Penal Code, but fabricating false evidence within section 192.

1 Ind. Jur. N. S. 18th Dec. 1865, p. 46.

The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which in fact, had not been re-paid.

Empress v. Feda Hossein, 10 C. L. R. 184.

To constitute the offence of forgery as defined by section 463 of the Indian Penal Code, it is not sufficient to prove that in making the document in respect of which the offence is charged, the accused knew that the document might injure, but it must be proved that it was his intention that it should injure another.

Reg. v. Lokenath Shaha, S. W. R. 1864, Cr. R. 12.

It is not sufficient for a conviction under section 474 of the Penal Code, to say that the prisoner might possibly have used an altered document. The guilty intent must be proved, not inferred.

Reg. v. Hurishchunder Bose, S. W. R. 1864, Cr. R. 22.

A fraudulent alteration of a Collectorate chellaun is a forgery of a document described in section 467 of the Penal Code.

Essanchunder v. Prannath Chowdhry & another, S. W. R. 1862, 71.

The forgery of a copy of a document comes within the definition of forgery as contained in section 463 of the Penal Code.

A Court has power to send a case for investigation to a Magistrate, under section 171 of the Code of Criminal Procedure (Act XXV of 1861) where no particular individual has as yet been accused.

Proceedings of 7th April, 1866. Weir, 210.

An uttering of the forged document is not requisite to constitute forgery. Essentials of the offence defined.

Guddappa, Appellant. Weir, 211.

The making of a document untrue in certain particulars, for the mere purpose of deceiving, does not amount to making a false document, within the meaning of section 464 of the Code. It must be shown that it was made with such an intention as is implied in the term "fraudulently" or in the term "dishonestly."

Empress v. Dhunum Kazee & another, 9 I. L. R. Calc. 53. S. C. 11. C. L. R. 169.

Where a person in the course of an action brought against him to gain possession of a property uses a forged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction: and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged.

Jan Mahomed and Jabar Mahomed v. Queen-Empress, 10 I. L. R. Calc. 584.

The accused in order to obtain a recognition from a settlement officer that they were entitled to the title of "Loskur" filed a *sunnud* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under sections 471, 464 of the Penal Code. Held, *on appeal*, that even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the settlement officer that they were entitled to the dignity of "Loskur," and that this could not be said to constitute "an intention to defraud." A *sunnud* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.

Radhanath Banerjee v. Kangalee Mol-

The Civil Judge made an order, under sections 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and if so, by whom. Held, that

lah & others, Marshall's Rep. 407. he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to, and had refused to make a similar order.

Reg. v. Bholay Pramanick, 17 S. W. R. Cr. R. 32. To support a conviction of the offence under section 471 of the Penal Code, there must be a using of a document by a person who knows or has reason to believe that it is forged.

Empress v. Fateh & another, 5 I. L. R. All. 217. The vendees of a plot of a land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. Held, that the alteration of the deed did not amount to "forgery" within the meaning of section 463 of the Indian Penal Code, nor could the deed after the alteration be designated a "forged document" as contemplated by section 470, the intention to cause wrongful loss or wrongful gain, or to defraud being wanting; nor could it be said that in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under section 471 of the Indian Penal Code. Further, that their use of it did not render them liable to conviction under section 196 of that Code.

Observations as to the exercise by an Appellate Court of the powers conferred on it by section 212 of Act X of 1872. (Criminal Procedure Code.)

Empress v. Jiwanand, 5 I. L. R. All. 221. Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of concealing such offence, held, that the making of such entries did not constitute the offence of forgery, and he had therefore been improperly convicted under section 465 of the Indian Penal Code. Queen *v.* Jakeshur Pershad (N. W. P. H. C. Rep 1874, p. 56) and Queen *v.* Lal Gumul, N. W. P. H. C. Rep. 1870 p. 11) followed.

MAHMOOD, J. :—In a recent case (Empress *v.* Fateh, 5 I. L. R. All. 217) I have fully stated my view that to constitute the offence of "forgery" under section 465, which must be read with sections 463 and 464, Indian Penal Code, a "dishonest" or "fraudulent" intent is absolutely essential, and these two words must not be understood in the vague and indefinite sense in which they are ordinarily used in English parlance. The words have been clearly defined in sections 24 and 25 of the Penal Code, and the former of those sections must be read with the preceding section 23. The question then arises whether the alterations, interpolations, or false entries made by the prisoner in the "chalan book" were made with such an intent as would bring them within the definition of forgery. In other words, did the prisoner intend to cause wrongful loss or wrongful gain to any person, or did he intend to defraud any one.

It is clear that intention *ex necessitate rei*, relates to some future occurrence and not to the past. It cannot be said when wrongful loss or wrongful gain

has already been caused, or a person has already defrauded, anything can be subsequently done which could be dictated with the intention to cause that which has already occurred. In the present case it is not even asserted by the prosecution that the object of the prisoner in making the interpolations was to cause any loss or to defraud any one in the future. Even if such were the case for the prosecution, I should hold that there is no evidence to warrant such a hypothesis. All that the circumstances of the case warrant, and, indeed, all that can be said against the prisoner in regard to the alterations and interpolations, is that he intended by those falsifications to escape the punishment and disgrace which the expected discovery of the deficit would involve. Such an intention does not, in the eye of the law, render the case one of forgery. The law has been clearly explained by PEARSON, J. in in the case of *Queen* v. *Jageshur Pershad*, in which that learned Judge held that falsifications of office records, made in order to conceal previous acts of fraud or negligence, do not amount to forgery, as no one would be defrauded or injured by them. A similar rule was adopted by TURNER and SPANKIE, JJ., in the case of *Queen* v. *Lal Gumul*.

Adhering to these rulings, I hold that the falsification of the "chalan-book" made by the prisoner in this case, however blameable it may be, did not constitute the offence of forgery, and that his conviction under section 465, Indian Penal Code, was therefore illegal. Confirming the conviction and sentence of the prisoner, appellant, Jiwanand, under section 408, Indian Penal Code, I quash the convictions and sentence passed by the Sessions Judge under section 465.

FRAUDULENT REMOVAL OF PROPERTY.

Gourchunder Chuckerbutty v. Kishen Mohun Singh, 10 S W R. Cr. R 46, S. C. 2 B. L R S. N. 4.

A person who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under section 206 of the Penal Code, and not under section 145, Act X of 1859.

Balmokoond Brojobasi, petitioner, 18 S. W. R. Cr. R. 65.

To bring a case under section 206 of the Penal Code, there must be a fraudulent removal, sale or transfer of property, or of some interest therein. intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine.

Reg. v. Gour Benode Dutt & another, 13 B L. R 30 note.

MARKBY, J. :—"The prisoners in this case have been convicted of dishonestly removing certain account-books under section 424 of the Indian Penal Code. It appears that the books in question were books of account belonging to a partnership, and I will assume, for the purposes of this case, that the Magistrate has found that the prisoner Gour Benode Dutt, was a partner in the business, and therefore, as a partner, the books will be the property of himself jointly

with his co-partners. The books were kept at the head-quarters of the firm at Cutwa, and were removed by the prisoners at night. There had been some disputes between the members of the firm; and, upon the removal of the books being made the subject of a charge against the prisoners, they denied having removed the books, and said that it was a false charge got up against them. Now it is contended before us, that the prisoner Gour Benode Dutt, as being a partner in the concern, and having therefore a right to the custody of these books, could not be guilty of the offence under section 424. It is urged that section 424 belongs to a class of offences which comprise concealment or removal of property so as to defraud creditors; and further, that a person could not be guilty, criminally speaking, of removing property of which he himself is the owner. Now it is not necessary for us to enter into the question, whether or no a partner would have a right of removing books of the firm from their proper place of custody, namely, the place where the business is usually carried on. Assuming that he has such a right, still it appears to us that the case falls within section 424. It is found that the object of removal was to defraud his co-partners, and there is nothing in section 424 which would justify us in limiting it as we are asked to do, to offences in respect of creditors only. The heading of the chapter is perfectly general. "Of fraudulent deeds and dispositions of property;" and the words of the section are also perfectly general. There is no reason why a man should not be criminally punished for defrauding his partner, just as he would be criminally punished for defrauding his creditors; nor is there any reason why a man should not fraudulently remove the property of a partnership just as he may fraudulently remove the property which belongs to himself. There may not have been that particular sort of removal which is necessary to constitute theft; but what we are considering is, not whether the prisoners are guilty of theft, but whether they are guilty of an offence under this section, and the offence which this section contemplates is such a removal or concealment of property,—in other words, such a change of the place in which the property is deposited as can be considered fraudulent. That having been found to be the case, I see no reason in point of law why this conviction should not stand. Mr. Ingram, is also desirous to go into the facts of the case. I think it would be contrary to the practice of this Court, when the facts have been twice investigated and found against the prisoners, that they should be again reconsidered here. Assuming the facts found to be correct, I think that the prisoners are rightly convicted."

Proceedings of 15th August, 1868. Weir, 189.

Abuse of section 424. Civil rights not to be disposed of in the Criminal Courts.

Bavuri Magata & another, accused. Weir, 189.

A removal of crops in violation of an order which the person making it has no authority to make, does not constitute an offence under section 424 of the Penal Code.

GAMBLING.

Reg. v. Nga Cho, 6 B. L. R. Ap. 98; S. C. 15 S. W. R. Cr. R. 2.

No charge for the offence (of keeping a lottery office) under section 10, Act XXVII of 1870, 294 A. can be entertained without the authority of the local Government.

Anonymous. 12 S. W. R. Cr. R. 34.

Lottery tickets, by reference to which it is to be decided whether the holder or purchaser wins the whole, or any part, of any stakes, are instruments of gaming within the 1st and 4th sections of Act III of 1867, and they are instruments of gaming of a nature similar to cards.

Banee Madhub Koondoo, petitioner, 21, S. W. R. Cr. R. 23.

The notification which the Government is empowered to issue under section 2 of the Gaming Act, II (B. C.) of 1867, should specify the limits of any town to which it is intended the Act should apply, and must be published in three consecutive Gazettes. Where a first notification which extended the Act to a town with specification of limits to which it was intended to be applied, was published only once, and a subsequent notification, published three times, extended the Act to the town without specifying the limits to which the Act was to apply, it was held that the subsequent notifications were not sufficient, but that did not prevent the operation of the Act in places which are shown to be undoubtedly within the town according to its ordinary designation.

Nazir Khan v. Proladh Dutta & others, 4 I. L. R. Calc. 659.

Where a police officer, unauthorized by a Magistrate or District Superintendent of Police, enters and searches an alleged gaming-house, and arrests persons found therein, a Magistrate is justified in convicting such persons, if it is proved, without resorting to the presumption created by Bengal Act, II of 1867, section 6, that the house is a gaming-house. Sreram Chundra Serkaw *v.* Bipin Dass and others, (4 I. L. R. Calc. 710) distinguished.

Sreram Chundra Serkau v. Bipin Dass & others, 4 I. L. R. Cal. 710.

A Deputy Inspector of Police is not authorized to enter and search an alleged gaming-house, unless he receives authority to do so from a Magistrate or a District Superintendent of Police. Where such an unauthorized entry and subsequent arrest of persons in a gaming-house takes place, there being no other evidence of an offence under section 5 of (Bengal) Act II of 1867, a Magistrate has no evidence before him on which he can convict. The evidence required cannot be presumed under section 6 of the Act, because that presumption only arises when the proceedings are authorized by section 5.

Reg. v. Khyroo & others, 2 N. W. P. Rep. All. 289.

The gist of the offence under section 4 of Act III of 1867, consists in the fact that the house in which the gambling takes place "is a common gaming-house." The gist of the offence under section 13 is "the gambling in a public street or place." Gambling in a private house is not an offence under the Act.

Reg. v. Subsookh & others, 2 N. W. P. Rep. All. 476.

To authorize an entry or search of a house under section 5 of Act III of 1867, there must be credible information before the Magistrate or Police officer who may take action under such section, that the house is a common gaming-house. Unless a house is entered or searched *under the provisions* of section 5, the finding of cards, dice, &c. therein will not be *primâ facie* evidence for the purposes mentioned in Act III of 1867.

Reg. v. Sheoshunker Singh, 3 N. W. P. Rep. All 1.

Gambling is not ordinarily punishable as an offence; it is only so punishable when carried on in a common gaming-house, or in a public street or place.

Reg. v. Sujjad Ali, 3 N. W. P. Rep. All. 134.

Gaming is not punishable by law unless it be carried on in public places or thoroughfares, or in common gaming-houses. Common gaming-houses are houses in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instrument of gaming or of the houses, or otherwise howsoever.

Imperatrix v. Vithal Bhai Chand, 6 I. L. R. Bom. 19.

A coin is not an instrument of gaming within the meaning of section 11 of Bombay, Act III of 1866. An instrument of gaming means an implement devised or intended for that purpose.

Reg. v. Bhikoba Vinoba & others, 4 Bom. Rep. Crown Cases, 9.

Held, that the words "three miles" in Bombay, Act No. III of 1866, section 1, clause 2, must be construed as three miles measured in a straight line along the horizontal plane, that being the most convenient meaning of the words, and the most capable of being ascertained.

Reg. v. Narayan Sundar, 5 Bom. Rep. Crown Cases, 1.

Conviction of keeping a common gaming-house upheld, where portion of the evidence against the accused consisted of instruments of gaming found in such house, which had been entered in pursuance of a search-warrant illegally issued, there being sufficient evidence *aliunde* to justify the conviction.

Reg. v. Nagji Hau et al, 7 Bom. Rep. Crown Cases, 74.

A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of section 268 of the Indian Penal Code.

Reg. v. Nana Moroji, 8 Bom. Rep. Crown Cases, 1.

A warrant issued under section 58 of Act XIII of 1856, should be addressed to some one or more inspectors, and not generally to "all constables and peace officers." Where a warrant in the latter form was executed under the direction of an inspector, it was held, that the error in the form of the warrant was merely an error of procedure, and did not affect the validity of the conviction, under section 57 of persons apprehended in pursuance of the warrant so executed.

Held, on the evidence, that there was sufficient to show that the house in which the prisoners were arrested was a common gaming-house :—A person is "found gaming" within the meaning of section 57 of Act XIII of 1856, who having been *seen* gaming by an inspector of police, is shortly afterwards, in a place adjoining the room in which he was seen gaming, apprehended by police constables acting under the direction of such inspector.

GENERAL EXCEPTIONS.

Reg. v. Sonoo & others, 10 S. W. R. Cr. R. 48.

To obtain the benefit of the exception allowed by section 94 of the Penal Code, it must be shown that the prisoners were compelled to act as they did from apprehension, that instant death would be the consequence of a refusal.

HOUSE-BREAKING.

Reg. v. Chytun Bowra, 5 S. W. R. Cr. R. 45.

A person convicted of house-breaking followed immediately by theft is punishable only under section 457 of the Penal Code.

Reg. v. Emdad Ally, 2 S. W. R. Cr. R. 65.

Effecting an entrance into a house at night by scaling a wall constitutes house-breaking by night under section 445 of the Penal Code.

Reg. v. Kenaram Bousee, 4 S. W. R. Cr. R. 19.

When the door of a shop was found broken open, Held, that the conviction should have been for house-breaking by night, and not simply lurking house-trespass.

Reg. v. Mussamut Mina Nuggerbhatun & Luckhea, 3 S. W. R. Cr. R. 19.

Discussion as to whether cumulative punishment under sections 454 and 380, (*i. e.*, for lurking house-trespass and theft) is legal.

House-breaking by night and theft, form a single and entire offence and cannot be punished separately.

Reg. v. Tonaokoch, 2 S. W. R. Cr. R. 63.

In a case of separate convictions and sentences for house-breaking by night and theft under sections 457 and 379 of the Penal Code, the conviction and sentence under section 379 were quashed, and those under section 457 were upheld.

Jogen Pullee v. Nobo Pullee, S. W. R. Cr. R. 49.

Theft is the sequel of, and cannot be separated from house-breaking. A cumulative sentence of 3 years' imprisonment was held to be illegal in such a case.

Mussahur Daoudh, 6 S. W. R. Cr. R. 92.

T. being an inmate of his uncle's house, broke open a chest and took out property from it. He was convicted of an offence under section 457 of the Indian Penal Code. Held, that he could not properly be convicted under that section.

Reg. v. Tasuduk Hossein, 6 N. W. P. Rep. All. 301.

Where the accused persons, execution creditors, in company with an authorized bailiff, broke open complainant's door before sunrise with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night; Held, that as they were not guilty of the offence of criminal trespass, there being no finding of any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed.

Jotharam Davay & another, in re, 2 I. L. R. Mad. 30.

Prisoner was convicted of house-breaking, his object being to have sexual intercourse with complainant's wife. Held, conviction valid.

Proceedings of 26th February, 1875. 8 Mad. Rep. Rul. 6.

Section 71 of the Penal Code applies to the case of a person charged with "house-breaking" under section 457 and "theft," committed on the same occasion, under section 380 of the Penal Code. A Magistrate has power to inflict only two years' imprisonment for a single offence.

Reg. v. Arjun, 1 Bom. Rep. 87.

Five men armed, were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers, and the robbers effected their escape, not, however, before two of them were identified, the prisoners in the case. Held, by the majority of the Court that the crime of which the prisoners were guilty was house-breaking by night and not dacoity.

Reg. v. Rewut Rajwar & another, S. W. R. 1864, Cr. R. 39.

HURT AND GRIEVOUS HURT.

Reg. v. Bassoo Ramah, 2 S. W. R. Cr. R. 29.

The prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt). Held, that it was not necessary to pass a separate sentence for the offence of house-trespass.

Reg. v. Bishnooram Surma, 1 S. W. R. Cr. R. 9.

A disability for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.

Reg. v. Bysagoo Noshyo, 8 S. W. R. Cr. R. 29.

Where a wife died from a chance kick in the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life. Held, that the husband was guilty of an offence under sections 319 and 321 of the Penal Code, and not of an offence under sections 320 and 322.

An admission by the husband in the presence of several witnesses, that he had killed the wife, and that she died, after receiving the kick, was held to be direct evidence against him.

Reg. v. Chakor Huree & others, 6 S. W. R. Cr. R. 16.

Where in a case of robbery attended with death, there was no intention of causing death, or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery, to voluntarily causing grievous hurt in committing robbery.

Reg. v. Chullundee Poramanick, 3 S. W. R. Cr. R. 55.

A person who, by a single blow, with a deadly weapon kills another who, at the dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty of causing grievous hurt on a grave and sudden provocation.

Reg. v. Salamut Russooa, 4 S. W. R. Cr. R. 17.

The amount of punishment for cutting off a wife's nose for intriguing with another man, depends on the time of the commission of the grievous hurt, whether at the instant, or long after the husband found himself dishonoured.

Reg. v. Kaminee Dossee, 12 S. W. R. Cr. R. 25.

There must be evidence to prove that hurt, as described in section 320 of the Penal Code, as grievous hurt, has been caused before a conviction can be had under section 320 of that Code.

Reg. v. Megha Meah, 2 S. W. R. Cr. R. 39.

When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide, but grievous hurt.

Reg. v. Menazoodin, 2 S. W. R. Cr. 33.
Reg. v. Sharoda Peshagur, 2 S. W. R. Cr. R. 32.

The offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine.

Reg. v. Nunkoo Doss, 2 S. W. R. Cr. R. 48.

The prisoners found a man in the act of theft, and were beating and cuffing him, when one of the witnesses for the prosecution threatened to call a chowkidar, and they released him. Two days afterwards he was found drowned. Held, that there was no evidence to convict the prisoners of causing grievous hurt. All presumptions consequent on the man's body being found drowned should have been put aside, and the original assault alone considered.

Reg. v. Punchanun Tantee, 5 S. W. R. Cr. R. 97.

The prisoner having received great provocation from his wife, pushed her with both arms, so as to throw her with violence to the ground, and after she was down, slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. Held, under the circumstances that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder.

Reg. v. Ramtohul Singh, 5 S. W. R., Cr. R. 12.

When the result of a joint attack by several persons on one man is the fracture of his arm; the offence committed is grievous hurt and not assault; and as the attack was made in furtherance of a common object, all are equally guilty of the same offence.

Reg. v. Ramtohul Singh, 5 S. W. R. Cr. R. 65.

When bone fractures have been caused, in addition to other injuries, the offence committed is grievous hurt, triable by a Court of Sessions, and not hurt cognizable by a Magistrate.

Reg. v. Umbica Tantinee, 4 S. W. R, Cr. R. 21.

Causing grievous hurt on grave and sudden provocation without any intention of causing grievous hurt, or knowledge that such hurt was likely to be caused, is punishable under section 335 of the Penal Code.

Gabind Chandra Biswas v. Hemchandra Barder & others, 6 B. L. R., Ap. 115.

A Magistrate has no power, under section 273 of the Code of Criminal Procedure (Act XXV of 1861) to refer a case of grievous hurt for trial to a Deputy Magistrate, having only the powers of a Subordinate Magistrate of the second class.

Gour Gobindo Thakoor & another, 6 S. W. R. Cr. R. 55.

Case of a man knocked down by a blow behind the ear, and then being hung up to a tree where he was found dead, in which the Magistrate convicted one of the prisoners of voluntarily causing hurt, and the other of abetting the same. Conviction quashed with a view to commitment of the parties implicated, before the Sessions.

Reg. v. Baboo Moondu & others 13 S. W. R. Cr. R. 23.

To bring a case under section 330 of the Penal Code, it must be proved that the hurt to the complainant was caused with intent to extort a confession of *some offence* or *misconduct punishable under the Penal Code.* That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witchcraft.

Reg. v. Purmanund Dhulia alias Purmeshur, 18 S. W. R. Cr. R. 22.

To establish a charge of grievous hurt, it is not necessary to prove that the accused struck the complainant so severely as to endanger the latter's life.

Reg. v. Beshor Bewa, 18 S. W. R. Cr. R. 29.

Where, according to prisoner's own confession (which was the only direct evidence against her) she, with a view to chastising the deceased, her daughter of 8 or 10 years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face, the result of which was death. Held, that the conviction should be under section 323, Penal Code of voluntarily causing hurt, and the punishment one year's rigorous imprisonment.

Reg. v. Nimchand Mookerjee & another, 20 S. W. R. Cr. R 41.

A charge may be made under section 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe, is that of inducing a person by hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.

Reg. v. Lukhinarain Agoori, 23 S. W. R. Cr. R. 61.

Where a prisoner was charged under the Indian Penal Code, sections 304, 323, and the jury brought in a verdict of guilty under section 335; Held, that he was not acquitted of grievous hurt, but found guilty of the offence described in section 322 with the extenuating circumstance which would confine the punishment within the limits specified in section 335.

Reg. v. Budri Roy, 23 S. W. R. Cr. R. 65.

To make out the offence of voluntarily causing grievous hurt under section 325, Penal Code, there must be some specific hurt, voluntarily inflicted, and coming within some of the eight kinds enumerated in section 320.

For the purposes of a judgment in Sessions trials, the testimony or conduct of Police officers concerned should be scrutinized and commented on in the same degree as those of other material witnesses, and not further.

Narayan Pasi, Case of, 24 S. W. R. Cr. R. 24.

A violent blow inflicted upon the body indicates an intention of grievous hurt. Where death is undoubtedly caused by the prisoner's violence, the Magistrate is bound to send the case to the Sessions Court.

Empress v. Sahae Rae, 3 I. L. R. Calc. 623S C 2C. L. R. 304.

An accused struck a woman, carrying an infant in her arms, violently over head and shoulders. One of the blows fell on the child's head, causing death. Held, that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.

Empress v. Idu Beg, 3 I. L. R. All. 776.

Where a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt; held, that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt.

Nidarmati Nagabhushanam (7 M. H. C. R. 119) Reg. *v.* Pemkoer (N. W. P. H. C. Rep. 1873, p. 38). Reg. *v.* Man (N. W. P. H. C. Rep. 1873, p. 235). Empress *v.* Ketabdi Mundul (I. L. R. 4 Calc. 764). Empress *v.* Fox (I. L. R. 2 All. 522) and Empress *v.* O'Brien (I. L. R. 2 All. 766) followed.

The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act distinguished.

Empress v. Randhir Singh, 3 I. L. R. All. 597.

A person, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of a brick at him which struck him in the region of the spleen and ruptured it, the spleen being diseased. Held, that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt.

Sambasivanna v. Bhogappa and others 5 I. L. R. Mad. 378.

Complainant alleged that he had been seized by the hands and legs, thrown to the ground, slapped, thumped, and slippered on the chest by three persons, one of whom gave a knife to another with directions to stab complainant. Held, that the complaint disclosed a case of hurt, and that section 210 of the Code of Criminal Procedure (Act X of 1872) did not justify the Magistrate in allowing the complaint to be withdrawn. (See now section 345, Act X of 1882.)

Proceedings of 5th Nov. 1872. 7. Mad. Rep. Rul. 11.

Upon the construction of section 324 of the Penal Code—Held, that it is not *necessary* that the manner of use (of the weapon) must be such as is likely to cause death.

Reg. v. Bhala Chula, 1. Bom. Rep. 17.

Causing hurt on grave and sudden provocation to the person giving the provocation, is chargeable as an offence under section 334, and not under section 324 of the Indian Penal Code.

Reg. v. Anta bin Daboda and another, 1 Bom. Rep. 101.

A prisoner charged with the offence of causing "grievous hurt" should be committed for trial to the Sessions Court.

Reg. v. Ambakom Girsoji, 4 Bom. Rep Crown Cases, 1.

In a case referred by a District Magistrate, under section 434 of the Criminal Procedure Code (Act XXV of 1861) on the ground that the sentence was illegal: because the charge should have been under section 324 of the Penal Code, for causing hurt by means of a heated substance,—an offence which the second class Subordinate Magistrate had no jurisdiction to try; and not under section 323 for causing hurt, of which offence the accused had been convicted:—The Court passed no order; as it did not think it right, under the circumstances of the case, to direct the retrial of the accused on the proper charge.

Reg. v. Nabaji valad Vithogi, 4 Bom. Rep. Crown Cases, 2.

In a case referred by a District Magistrate, under section 427 of the Criminal Procedure Code, (Act XXV of 1861) on the ground that the charge should have been under section 324 of the Penal Code,—an offence not within the cognisance of a second class Subordinate Magistrate; and not under section 323:—The Court passed no order; and remarked that the case should not have been referred under section 427 which applies only to the Court of Session acting in appeal from a Court subordinate to it.

Chinni Ramudu, Appellant. Weir, 108.

Where accused caused death by a severe poke with a stick, which had the effect of rupturing a diseased spleen, the accused being presumably unaware that the spleen was diseased, and there being no evidence of an intention to cause such injury as was likely to cause death, or of a knowledge that the act was likely to cause death: Held, that the conviction should have been of simple hurt.

Proceedings of 23rd February, 1880. Weir, 125.

Where death was the result of an act designedly done to cause hurt, but without any intention to cause death, or any knowledge that death might be the probable consequence: Held, that the conviction should have been of hurt and not of causing death by a rash or negligent act.

IMMATURITY OF UNDERSTANDING.

Reg. v. Luckini Agradanini, 22 S. W. R. Cr. R. 27.

An objection that the accused is of such an age as not to have attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, is not one of a preliminary character, but rather a matter of defence to be considered with the other issues arising in the case.

Where the accused was over seven years of age and under twelve, the incapacity to comm' ' an offence only arises where the child has not attained sufficient maturity, c , such non-attainment would have apparently to be specially pleaded and proved. The "consequences of his conduct" mentioned in section 83, Penal Code, are not the penal consequences to the offender, but the natural consequences which flow from a voluntary act.

MISCARRIAGE.

Reg. v. Kabul Pattur, 15 S. W. R. Cr. R. 4.

The offence defined in section 312, Penal Code, (causing miscarriage) can only be committed when a woman is in fact pregnant.

Reg. v. Arunja Bewa & another, 19 S. W. R. Cr. R. 32.

In a case in which the child was full grown, the Court declined to convict the accused of causing miscarriage under section 312, Penal Code,—that section, supposing an expulsion of the child before the period of gestation is completed,—but convicted them of an attempt to cause miscarriage under sections 312 and 511 read together.

Proceedings of 6th Aug. 1869, 4 Mad. Rep. Rul. 63.

Upon a prosecution under section 318 of the Penal Code, a person cannot be convicted of concealing the birth of a child in the case of a mere fœtus four months old. In Reg. *v.* Berriman (cited in Russell) it was held by ERLE, J. that the offence cannot be committed unless the child had arrived at that stage of maturity at the time of birth, that it might have been a living child, and that the law does not compel a woman to proclaim her own want of chastity, and that if she miscarried when the fœtus was not a few months old, and had no chance of life, she cannot be convicted of the charge of concealing the birth of a child. It appeared to the High Court that this applies as much to a charge under section 318, Penal Code, as to a charge under the corresponding English Statute. There was nothing in this case to show that the prisoner caused herself to miscarry.

Proceedings of 21st July, 1868. Weir, 126.

Concealment of the birth of a fœtus does not amount to an offence under section 318 of the Penal Code.

MISCHIEF.

Forbes v. Girishchundra Bhuttacharjee, 6 B. L. R. Ap. 3, S. C. 14 S. W. R. Cr. R. 31.

Mere neglect on the part of an owner of cattle to keep them from straying into fields, is not causing cattle to enter a compound within the meaning of section 425 of the Penal Code. The section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that by so doing he is likely to cause damage.

Bakar Halsana v. Dinobandhu Biswas, 3 B. L. R. Cr. 17; S. C. 12 S. W. R. Cr. 1.

The right to a fishery was in dispute between the zemindar of Bally and the zemindar of Moharajpore. The former obtained a decree in the Civil Court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the Bally zemindar thereupon removed a bamboo bar, which the Moharajpore people had erected to prevent the passage of fish. For this they were convicted of mischief under the Penal Code, and punished by fine. Held, on reference to the High Court, that the conviction could not stand, as the Moharajpore zemindar had not shown that he was legally entitled to the fishery, and as it did not appear that the defendants were acting otherwise than from a *bonâ fide* belief that the Moharajpore zemindar was encroaching on their master's rights.

Ram Golam Singh, petitioner, 6 S. W. R. Cr. R. 59.

The authority vested in the Criminal Court of punishing persons for acts of mischief, is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of section 425 of the Penal Code.

Araz Sircar, Case of, 10 S. W. R. Cr. R. 29.

Section 425 of the Penal Code, supposes that the destruction was caused with the *intention* to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and section 17, Act III of 1857 supposes the mischief (cattle trespass) was done intentionally and not by negligence.

Kashinath Ghose & others v. Dinobundhoo Mytee, 16 S. W. R. Cr. R. 62.

Without evidence that the accused intended or knew that he was likely to cause wrongful loss or damage to the complainant, the offence of mischief under section 425 of the Penal Code was held not made out.

Mahomed Foyaz v. Khan Mahomed, 18 S. W. R. Cr. R. 10.

A conviction for mischief was quashed in a case where it appeared that the complainant had formerly destroyed a crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time and then took the complainant's crop.

Shakur Mahomed v. Chunder Mohun Shah, 21 S. W. R. Cr. R. 38.

In a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mischief under section 426 of the Penal Code.

Reg. v. Ramaotur Panre, 25 S. W. R. Cr. R. 5.

A charge of mischief, even if combined with one of theft, is triable summarily under Act X of 1872, section 221.

Sonai Sardar v. Buktar Sardar, 25 S. W. R. Cr. R. 46.

A person commits mischief if he cuts trees on land which he claims, but of which possession after an execution-sale, has been legally made over to another person, without any objection or formal intervention on his part.

Issur Chunder Mundle & others in re, 25 S. W. R. Cr. R. 65.

In order to convict one of the offence of mischief under section 426, Indian Penal Code, it is for the prosecution to prove that the accused caused damage with a wrongful intent—with a knowledge, that he was not justified in doing it, and that the party under whose orders he was acting, had no real title.

Prannath Shaha & Romanath Banerjee, petitioners, 25 S. W. R. Cr. R. 69.

Where an accused person had, at the instance of the Magistrate who had come across him while out walking one morning, been placed on his defence for mischief, and summarily tried, and sentenced to two months' rigorous imprisonment; and the Magistrate had by a letter to the Registrar of the High Court, furnished the explanation that the accused had, while extending a garden and laying the foundation of a house, encroached on the inner slope of a river embankment, and thereby endangered the safety of the whole station: Held, firstly, that in order to justify a conviction for the offence of mischief, it must appear that the accused person had done a particular act with intent to cause, or knowing it to be likely to cause, wrongful loss; and that, as the house and garden on which the accused was engaged would be the first to swept away in the event of the dreaded breach in the bund, and consequent ·uption of the river, such guilty knowledge or intent could not reasonbly be inferred on his part: and secondly, that, in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily, and sentencing off the accused to imprisonment.

Empress v. Rajcoomar Singh & another, 3 I. L. R. Calc. 573; S. C. 2 C. L. R. 62.

A. a joint-owner of a parcel of land, erected on it an edifice without the consent and against the will of B. another joint-owner. A dispute having arisen in consequence, the Magistrate held an enquiry, and made an order under section 530 of the Criminal Procedure Code (Act X of 1872) awarding to A. exclusive possession of the part of the land on which the edifice had been

erected. Held, *per* JACKSON, J. that such order was erroneous, as the matter was not one to which section 530 could apply. B. subsequently brought a suit in the Civil Court to establish his title to joint-possession of the whole parcel and for a declaration that A. was not entitled to erect any edifice thereon; and he further prayed that such edifice should be removed. B. obtained a decree, whereupon his servants went on the land and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. Held, *per* JACKSON, J. that as there had been no causing of wrongful loss, the accused had not been guilty of mischief.

On the 8th October, the accused who were the servants B. found the men in the employ of A. were putting up this erection, a nawbut-khana, again, and accordingly protested against its erection, pulled down the bamboos, thrust aside the servants of A. throwing to the ground one man who was clinging to the bamboos. On the 9th October 1877, these servants were charged before the Magistrate with rioting, and being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused on 12th October 1877. Held, *per* JACKSON, J. that this being a warrant case it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might at his discretion have adjourned the case.

Held, further *per* JACKSON, J. that the meaning of section 359 of the Criminal Procedure Code is, that if among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment and enquire whether such witness is material; but that the section is not intended to enable the Magistrate to enquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and further, that in the present case there was not any purpose of vexation or delay, and that by the refusal to grant further time, the accused had been probably prejudiced in their defence.

Held, further *per* JACKSON, J. that, as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well as the procedure was illegal.

Held, *per* CUNNINGHAM, J. that the accused were merely exercising the remedy of abating a private nuisance, and were exercising a legal right of self-defence.

Held, further *per* CUNNINGHAM, J. that the acts of the complainants in erecting the nawbut-khana amounted to mischief, and came within the purview of section 425 of the Penal Code.

Ramakrishna Chetti v. Palaniyandi Kudambar & another, 1 I. L. R. Mad. 262.

Held by the majority of a Full Bench, INNES, J. dissenting, that it is not part of the definition of the offence of causing a diminution of water-supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right.

Reg. v. Vyapuri, 5 I. L. R. Mad. 401.

The destruction of a document evidencing an agreement void for immorality, may constitute the offence of mischief within the meaning of section 426 of the Indian Penal Code.

Proceedings of 22nd Oct. 1868. 4 Mad. Rep. Rul. 15.

To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property, or such a change in the property or the situation of it as destroys or diminishes its value or utility or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief.

Proceedings of 22nd July 1870. 5 Mad. Rep. Rul. 30.

The defendants were convicted of mischief under section 427 of the Indian Penal Code for grazing their cattle upon waste lands without payment of certain capitation fees to which the prosecutor was entitled. Held, that there was no evidence that the defendants caused mischief. The only injury alleged, was the non payment of fees. This was clearly a matter for a civil action.

Proceedings of 4th Nov. 1870. 5 Mad. Rep. Rul. 40.

The accused were convicted of mischief. The facts were, that whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. Held, that the conviction was bad.

Proceedings of 10th Nov. 1871. 6 Mad. Rep. Rul. 37.

The mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.

Proceedings of 12th Nov. 1874. 7 Mad. Rep. Rul. 39.

Defendants were convicted of committing mischief under the following circumstances. During certain seasons of the year they received water through a certain sluice for the irrigation of their lands. At another season the sluice was closed, and the water allowed to flow to the lands of other cultivators. This arrangement was prescribed by the Revenue Authorities, and the defendants violated it, by opening their sluice during the season prescribed for the irrigation of the lands of the other cultivators. Held, by the High Court, that the conviction could not be sustained. That there had been no destruction of property, or diminution in the value or utility of property, by defendants within the definition in section 425 of the Penal Code.

Reg v. Narayan Krishna & others, 2 Bom. Rep. 392.

Held that it was not illegal to convict prisoners of mischief, as well as of theft; the offences charged being, that they had cut down Government trees without leave, and appropriated them.

Reg v. Wells, 7 Bom. Rep Crown Cases, 1.

Where a Magistrate, being also a Justice of the Peace, convicted a British-born subject of mischief under section 426 of the Indian Penal Code, the High Court annulled the conviction and sentence, and directed the accused to be committed to take his trial before the High Court,

unless the complainant withdrew the charge, under section 271 of the Criminal Procedure Code (Act XXV of 1861).

Proceedings of 31st May 1881. Weir, 191.

To constitute the offence of mischief, it is necessary that the act which causes a destruction of property should be done with the knowledge that it is likely to cause wrongful loss to another. It is not mischief to remove an obstruction from property which belongs to the person removing it or is *bonâ fide* believed to belong to such person, for the loss which may thereby arise is not wrongful loss.

Proceedings of 11th April 1881. Weir, 193.

Where accused threw a stone at a cow thereby breaking its leg, there being no evidence as to the size of the stone; Held, that a conviction for mischief could not be sustained as there was no evidence of the required intent.

Proceedings of 13th April 1881. Weir, 194.

Where a channel had been set apart by Government for the irrigation of a certain village, any damming of the channel at a point in the stream higher up than that village being prohibited, and the accused by means of a dam diverted the water to another village: Held, that the accused must be held to have diverted the water with the knowledge that it would cause wrongful loss. To constitute the offence (section 430, Indian Penal Code) it is not necessary to prove actual loss.

Jyanagowd, accused. Weir, 196.

Where the accused took water for agricultural purposes to which he was not entitled, and thereby diminished the supply to others who were entitled: Held, that the conviction was good.

Vattu Karan, accused. Weir, 197.

Where there is no intention to cause loss and where no diminution in the usefulness of the water is caused, a diversion of the water of a channel not exclusively appropriated to the use of another, will not constitute the offence. Section 430, Indian Penal Code.

MURDER.

Reg. v. Akulpattee Gossain, 5 S. W. R. Cr. R 58.

Intoxication is no excuse for a man throttling to death another and a weaker man who was also intoxicated. The assessors having brought the case within Exception 4 of section 300 of the Penal Code, without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder.

Reg. v. Anunto Rurnagat, 6 S. W. R. Cr. R 57.

In a case of murder by consent, Held, that evidence of consent which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt

Reg. v. Balakee Jolahed, 1 B. L. R. S. N. 8., S. C. 10 S. W. R. Cr. R. 9.

The right of private defence of property against house-breaking, does not extend to causing the death of the house-breaker when he has made his escape from the premises empty-handed, and is at some distance from the place. The Sessions Judge found that the prisoner caused the death of deceased "in the exercise of good faith, of the right of private defence of his property, and in endeavouring to secure the person of an escaping thief, without any intention of doing more harm than was necessary for the purpose." It was remarked by the High Court in appeal that "it cannot be said, that the driving of a spear several inches deep, into the body of a half naked and unarmed man, evinces an intention of doing no more harm than was necessary to effect his capture."

Reg. v. Beria Bazikur & another, 3 S. W. R. Cr. R. 38.

The Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death, in other words, guilty of murder, convicted and punished them for culpable homicide not amounting to murder. The case was remanded for a new trial, (JACKSON, J. dissenting).

Reg. v. Beharee alias Kurreem Bux, 3 S. W. R. Cr. R. 23.

Prisoner acquitted of attempt to murder, but directed to be proceeded with by the Magistrate under section 297, Code of Criminal Procedure, (Act XXV of 1861) with a view to security being taken for his future peaceable behaviour.

Reg. v. Bhadoo Poramanick, 4 S. W. R. Cr. R. 23.

The offences of murder and of culpable homicide not amounting to murder, both suppose an intention to cause death, or knowledge that the injury inflicted, was likely to cause death. In the absence of such intention or knowledge, the offence committed may be that of causing grievous hurt.

Reg. v. Bheekye alias Sheikh Anser, 1 S. W. R. Cr. R. 46.

A capital sentence mitigated in a case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.

Reg. v. Bhootoo Mullick, 6 S. W. Cr. R. 85.

A sentence of transportation other than for life, is illegal in the case of a prisoner convicted of murder.

Reg. v. Beshendharee Cahar, 7 S. W. R. Cr. R. 100.

Curious case of murder, where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice.

Reg. v. Bishonath Bunnea, 8 S. W. R. Cr. R. 53.

Where a quiet peaceable man, suddenly, and without the least motive or provocation, runs amuck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty.

Reg. v. Buddurooden, 11 S. W. R. Cr. R. 20.

A Judge was held to have exercised a proper discretion, in not passing sentence of death, in a case in which the dead body was not found.

Reg. v. Baboo Lall Jhah, 1 S. W. R. Cr. R. 48.

Though the evidence was held to be sufficient to convict the accused of murder, yet as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence, and pass one of transportation for life.

Chutto Chamar, Appellant, 1 S. W. R. Cr. R 3.

Murder by poison. A man and a dog die a few hours after eating the same food, but no traces of poison are found in their bodies or in the possession of the accused.

The mode of investigation by the Police and by the Magistrates in such cases fully laid down.

Reg. v. Sheikh Choollye, 4 S. W. R. Cr. R. 35.

Held by the majority (CAMPBELL, J. dissenting) that, if a man strikes another on the head with a stick when he is asleep, and fractures his skull, knowledge of likelihood of causing death must be presumed; and that, if none of the Exceptions under section 300 of the Penal Code are pleaded or probable, the offence committed is murder.

Reg. v. Dabee & others, S. W. R. 1864, Cr. 27.

Section 380 of the Code of Criminal Procedure (Act XXV of 1861) does not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, but only requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable, a mitigation of the sentence required by the law to be passed in such cases, the Judge may record these circumstances, and submit them for the consideration of the Government, and the Government may, under section 54, act as to it seems proper.

Reg. v. Dasser Bhooyan, 8 S. W. R. Cr. R. 71.

Two parties met each other in a drunken state, and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them, ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple, as the latter was rising or had just arisen from the ground, causing instant death. Held, that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of clauses 2 and 3, section 300, Indian Penal Code.

Reg. v. Durwan Geer, 5 S. W. R. Cr. R. 73.

Held by the majority of the Court (CAMPBELL, J. dissenting), that when a person wilfully and deliberately killed a man who was endeavouring to escape, after having been detected in the act of house-breaking by night for the purpose of theft, the offence committed was murder, and could not be consi-

dered to have been committed in the exercise of the right of private defence either of person or property, nor under grave and sudden provocation.

Reg. v. Gobind Bagdee, 3 S. W. R. Cr. R. 1.

Discussion as to the sufficiency of the evidence in a case of murder, and the necessity of applying to Government for a pardon on behalf of the prisoner.

Reg. v. Gureebooollah, 5 S. W. R. Cr. 42.

Under the Penal Code, no constructive but an actual intention to cause death is required to constitute murder. Thus, where a boy of 15 years old, in the heat of discovering the deceased in the act of adultery with the wife of a near relative, and without the use of any lethal or other weapon, joined that relative in committing an assault upon the deceased, who died from the effects thereof. Held, that the offence committed was culpable homicide not amounting to murder.

Reg. v. Gourchand Pollie & Dwarka Pollie, 1 S. W. R. Cr. R. 17.

The two prisoners having confessed that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. Held, that the very grave provocation given to them, was such as to reduce their crime from murder to culpable homicide not amounting to murder.

Reg. v. Hyder Jolaha, 6. S. W. R. Cr. R. 83.

A person may be convicted of murder on his own confession. Where a master accompanies a servant knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being, that both were acting with a common intent.

Reg. v. Jaichund Mundle & others, 7 S. W. R. Cr. R. 60.

Proof of motive or previous ill-will, is not necessary to sustain a conviction for murder, in a case where a person is coolly and barbarously put to death.

Reg. v. Jan Mahomed & Kamoo Gazee, 1 S. W. R. Cr. R. 49.

When two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by, while the crime was being committed, he would be an abettor.

Reg. v. Joy Gopaul, 4 S. W. R. Cr. R. 4.

Held by the majority of the Court (dissenting SETON-KARR, J.) that the offence of administering deleterious drugs when life was not endangered, is punishable under section 328 of the Penal Code, and not as for grievous hurt under section 326.

Reg. v. Gokool Bowree & others, 5 S. W. R. Cr. R. 33.

Held by the majority of the Court that the offence committed was murder where the death of a weak, half-starved old woman who was detected stealing, was caused in the exercise of the right of private defence, by doing of more harm than was necessary for the purpose of

such defence :—CAMPBELL, J. *contra*, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.

Jotee Ghoraee, Appellant, 1 S. W. R. Cr. R. 7.

The words "or other thing" in section 328 of the Penal Code, must be referred to the preceding words, and be taken to mean "unwholesome or other thing" not "other thing" simply.

Reg. v. Bani Dass, 14 S. W. R. Cr. R. 2.

On a conviction for murder, the only punishments that can legally be awarded, are death or transportation for life.

Reg v Busti Singh, 14 S W R. Cr. R 76.

In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, a Sessions Judge has himself power under section 4, Act XVII of 1862 to pass sentence of death, instead of referring the matter for confirmation of the High Court.

Reg. v. Cassidy, 4 Bom Rep. Cr. 17.

In order to constitute the offence of attempt to murder, under section 307 of the Indian Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under section 511 taken in connection with sections 299 and 300.

Therefore where the prisoner presented an uncapped gun at F. G. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger. Held, that he could not be convicted of an attempt to murder upon a charge framed under section 307 of the Indian Penal Code, but that under the same circumstances he might be convicted upon a charge of simple attempt to murder framed under section 511 in connection with sections 299 and 300.

Unnecessary allegations in a charge may be rejected as surplusage.

Apparent inconsistency between the English law with reference to attempts; as laid down in Reg. *v.* Collins and the provisions of the Indian Penal Code explained.

Reg. v Jamal & others, 16 S W. R. Cr. R. 65.

The High Court has no power even where there is ground for doing so, to mitigate a sentence of transportation for life passed on persons found guilty of murder.

Reg. v Karoo Rumnee & Nundo Khettree, 6 S. W. R Cr. R. 44.

Held, in a case of murder that the Judge had not given a proper direction to the jury in telling them, that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose

a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplices, to point out any independent evidence proving facts showing that the prisoners were, or must have been present at, or cognizant of the murder.

Reg. v. Kewal Dosad, S. W. R. 1864, Cr. 36.

A conviction for murder was held to be wrong in a case when a prisoner, taking advantage of an incident which occurred in what, till then, had been a fair fight, struck his opponent and knocked him over, thereby causing his death.

Reg. v. Khoaz Sheikh, 5 S. W. R. Cr. R. 20.

The punishment of death should not be inflicted in case where there was no intention to cause death, but merely a reckless assault with a deadly weapon which inflicted an injury likely in the ordinary course of nature to cause death.

Reg. v. Khodabux Fakeer, 10 S. W. R. Cr. R. 52.

Held that where, from the circumstances, it appeared that a child who had been exposed by the prisoner died, but that death was not caused, except very remotely, by the exposure, the prisoner, though guilty under section 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.

Reg. v. Mahomed Elim Abdool Kurreem, 3 S. W. R. Cr. R. 40.

The absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.

Reg. v. Mahomed Hassain, S. W. R. Cr. 31, 1864.

In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence.

Reg. v. Mussamut Aimona, 1 S. W. R. Cr. R. 43.

In construing section 83 of the Penal Code, the capacity of doing that which is wrong, is not so much to be measured by years, as by the strength of the offenders' understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem.*

Reg. v. Mussamut Poochee, 3 S. W. R. Cr. R. 9.

Discussion as to insanity in the case of a person charged with murder.

Reg. v. Nazoo Fakir, 4 S. W. R. Cr. R. 26.

Held by the majority, that when two members of an unlawful assembly use spears, and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.

Reg. v. Nilmadhub Sirkar & others, 3 S. W. R. Cr. R. 22.

A. is guilty of murder if he several times kicks B. who, after having been severely beaten, has fallen down senseless, as A. must have known that such kicks were likely to cause death in the state in which B. then was. The conviction for murder was confirmed, and the prisoner sentenced to transportation for life.

Reg. v. Nokul Nushyo, 7 S. W. R. Cr. R. 27.

Where a man suddenly cut his wife's throat, it was held that in order to establish that the act was not done under grave provocation, so as to bring the case under Exception 1 of section 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak, and the instant when the prisoner attacked her.

Reg. v. Oaram Sungra, 6 S. W. R. Cr. R. 82.

A sentence of death was commuted into one of transportation for life, in the case of a prisoner who committed murder in the belief that the deceased was a wizard, and the cause of his child's illness, and that by killing the deceased, the child's life might be saved.

Reg. v. Panchee Aurut, 15 S. W. R. Cr. R. 66.

Capital sentence should be pronounced on a conviction for murder, even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery.

Reg. v. Petta Gazi, 4 S. W. R. Cr. R. 19.

When prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction.

Reg. v. Peter Ram Thappa, 3 S. W. R. Cr. R. 11.

Case of conviction of murder on the confession of the accused, together, with evidence as to his conduct both before and after the murder.

Reg. v. Phomonsee Ahum, 8 S.W.Cr R 78.

Where an accused killed A. whom he had no intention of killing, by a blow with a highly lethal weapon intended to kill B. he was held guilty of the murder of A.

Reg. v. Poorusoollah Shikdar, 7 S. W. R. Cr. R. 14.

In a case of murder, where a man was struck on the head in a boat with a heavy paddle, and knocked overboard in a large river in the height of the rains, and had never been heard of since, it was held impossible to suppose that the man was still alive.

Reg. v. Pooshoo & Hurrah 4. S. W. R. Cr. R. 33.

Held by the majority, that when four men beat another at intervals so severely as to cause death, they must be presumed to have known, that by such acts they were likely to cause death, that when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder, and was not reduced to culpable homicide not amounting to murder, by the absence of intention to cause death.

Reg. v. Ramnath Gwala, 3 S. W. R. Cr. R. 27.

Sentence of transportation for life instead of death in a case of murder, there being reason to believe that the murdered man and the prisoner had been drinking together, and that the murdered man excited the prisoner's passion by calling him a thief, the result being that they separated, and the prisoner obtaining a sword from a neighbour's house attacked his friend and killed him.

Reg. v. Ram Sahoy Bhar, S. W. R. 1864, Cr. R. 24.

In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it does not palliate any offence may be taken into account as throwing light on the question of intention.

Reg. v. Rughoo, S. W. R. 1864, Cr. R. 30.

Where the law gives the alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then under section 59 change it to transportation for that period.

Reg. v. Shaikh Solim, 5 S. W. R. Cr. R. 41.

It is not murder if a person kills another without intending to take his life, and if the acts done were not such as conclusively indicated an intention to cause such injury as was likely to cause death.

Reg. v. Shobha Sheikh Gorman, S. W. R. 1864, Cr. R. 2.

In this case the prisoner was convicted of murder, but the intention of causing death not being fully established, the sentence of death was commuted to transportation for life.

Reg. v. Sohraie, 13 S. W. R. Cr. R. 33.

Under Exception 1, Section 300 of the Penal Code, the finding of a jury as to whether the offence of murder was committed under grave and sudden provocation sufficient to prevent the offence from amounting to murder, is a question of fact with which the High Court cannot interfere.

Reg. v. Tepra Fukeer, 5 S. W R. Cr. R. 78.

A person who beats another brutally and continuously, so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the very fact of his taking such a precaution evincing deliberation) is guilty of murder, or culpable homicide not amounting to murder, according as there may or may not, have been grave provocation.

Reg. v. Tonoo & another, 6 S. W R. Cr. R. 46.

The sentence of death reduced to transportation for life, in a case of murder committed rather by way of retaliation for injury, than under the influence of any worse passion.

Reg. v. Toyab Sheikh, 5 S. W. R. Cr. R. 2.

A Judge should clearly acquit a prisoner of murder when so charged, and not merely find him guilty of culpable homicide not amounting to murder. When a Judge acquits a prisoner of murder, the High Court cannot either as a Court of Appeal or as a Court of Revision find that, according to the evidence, the prisoner caused death with the knowledge mentioned in clause 4, section 300 of the Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error or enhance the sentence.

Empress v. Jhubboo Mahton, 8 I. L. R. Calc. 738.

Per FIELD, J. :—Where a prisoner is constructively guilty of murder under section 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of section 149 so as to make other prisoners, by a double construction, guilty of murder.

Bejadhur Rai, Appellant, 2 C. L. R. 211.

The appellant having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds which resulted in the death of one person.

Held: *per* JACKSON, J. :—That such conduct raises an interference that he intended to cause death.

Per AINSLIE, J. :—That though he probably did not see how his blows were directed, as he struck them with a deadly weapon regardless of consequences, he must have known that his act is imminently dangerous; that it must, in all probability, cause such bodily injury as was likely to cause death.

Per CUNNINGHAM, *J.* :—That the offence was culpable homicide and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder.

Empress v. Khogayi, 2 I. L. R. Mad. 122.

The provocation contemplated by section 300 of the Indian Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.

Empress v. Bhagirath, 3 I. L. R. All. 383.

The mere fact that the body of the murdered person has not been found, is not a ground for refusing to convict the accused person of the murder.

Reg. v. Gunga Singh, 5 N. W. P. Rep. All. 44.

Where it appeared that the prisoner, a Rajpoot, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was nothing to show that the prisoner was not

in a position to support the child, Held, that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder.

Reg. v. Balapa Bin Dunapa & others, 1 I. L. R. Bom. 639.

Under section 288 of the Code of Criminal Procedure, (Act X of 1872) the High Court, to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to murder, if it be of opinion that the evidence does not establish the former but the latter offence. It must order a new trial for that purpose. Where the prisoners were tried on two charges, of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but the Sessions Judge, being of opinion that the evidence established the former charge, recorded a conviction and sentence for murder only, the High Court being of opinion on a reference under section 287 of Act X of 1872, that the offence proved was culpable homicide not amounting to murder, did not order a new trial *ab initio*, but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder.

Reg. v. Govinda, 1 I. L. R. Bom. 342.

Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, Held, that there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder.

Reg. v. Sobeel Mahee, 5 S. W. R. Cr. R. 32.

When a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was likely to cause death, the conviction should be of murder, and not of culpable homicide not amounting to murder.

Empress v. Abdul Hakim, 3 I. L. R. All. 253.

A head constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more on the ground that they were poor and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound and the head constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head constable fired with a

gun at such crowd when it was about five paces from him, and killed one of the gipsies, and having done so ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased, had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. Held, that such head constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head constable was guilty of culpable homicide amounting to murder.

Reg. v. Kallachand Gope, 10 S. W. R. Cr. R. 59.

To bring a case under clause 4, section 300 of the Penal Code, it must be proved that the accused, in committing the act charged, knew that it must in all probability be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. When a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder and convicted of an offence under section 314 of the Penal Code.

Reg. v. Madur Jolaha, 8 S. W. R. Sr. R. 28.

Explanation of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.

Reg. v. Bahar Ali Kahar, Appellant, 15 S. W. R. Cr. R 46.

Conviction by a jury set aside in a case of murder, in which there was a total absence of all evidence to show that the prisoner had committed the crime.

Reg. v. Bechoo Saout & another, 19 S. W. R. Cr. R 35.

To enable a person to plead the extenuating circumstances provided for in section 300, Penal Code, Exception 1, the provocation and its effects must be sudden as well as grave; and the deprivation of the power of self-control must continue, in order to benefit a man who kills another under circumstances of grave provocation.

Reg. v. Doorjodhun Shamonto alias Deejobar, 19 S. W. R. Cr. R. 45.

Where a person under sentence of transportation for life, on a conviction for murder, is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to section 303, Penal Code, is that of death. The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge differing in that point from the jury referred the case to the High Court under section 263 of the Code of Criminal Procedure (Act X of 1872): Held, that—in a case of this kind, the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by section 263, Code of

Criminal Procedure. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to.

Reg. v. Sheikh Roheem, 12 S. W. R. Cr. R. 39.

Under section 280 of the Code of Criminal Procedure, (Act X of 1872) the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly.

Reg. v. Mohamed Asger & another, 23 S. W. R. Cr. R. 11.

Where a blow is struck by A. in the presence of, and by the order of B., both are principals in the transaction; and where two persons join in beating a man and he dies, it is not necessary to ascertain exactly what the effect of each blow was.

Reg. v. Jumiruddin 23 S. W. R. Cr. R. 58.

A Sessions Judge is bound to decide whether the offence committed is murder or culpable homicide not amounting to murder, even if the person who struck the fatal blow is not under trial. If an accused has not his witnesses present, the Judge should, under section 251, Criminal Procedure Code, (Act X of 1872) if he sees grounds for proceeding, first call upon him for his defence, and then postpone the case.

Reg. v. Gour Chunder Das & others, 24 S. W. Cr. R. 5.

Where each of several persons took part in beating a person so as to break eighteen ribs and cause his death, each of them was held to be guilty, as a principal, of the murder of the deceased.

Reg. v. Ramchurn Kurmokar, 24 S. W. R. Cr. R. 28.

Where a murder is not premeditated, transportation for life is a sufficient punishment. A Sessions Judge should not impart into his judgment the opinion of an assessor derived from personal knowledge, and unsupported by evidence on record.

Reg. v. Somiruddin, 24 S. W. R. Cr. R. 48.

Where it appeared in the case of a person charged with murder, that while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of further violence, finding a knife at hand, he took it up, and in the mélée inflicted the wound which caused the death of the deceased. Held, that, under the circumstances, the accused was guilty under the Indian Penal Code, section 304, of culpable homicide not amounting to murder.

Reg. v. Gocool Kahar, 25 S. W. R. Cr. R. 36.

Where a jury found an accused person guilty of murder, but refused to convict him, because there had been no eye-witnesses of his crime, and on a second charge from the Judge refused to find him guilty at all. Held, by the High Court, to whom the case was referred, that the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived.

Empress v. Mulna, 1 I. L. R. All. 599.

Upon the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII of 1862 the Regulations prescribing punishments for offences were repealed "except as to any offence committed before the 1st January 1862." By the same Act it was declared that no person who should claim the same, should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations. By section 6 of Act I of 1868 the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section, the repeal of Act XVII of 1862 by Act VIII of 1868 and Act X of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII of 1862 repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I of 1868.

Held, accordingly, where a person committed murder in the year 1855 that such person was punishable under the Regulations. Held also, that, inasmuch as such a right as the right of reference given by section 3 of Regulation IV of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862, has such right.

Reg. v. Chima, 8 Bom. Rep. Crown Cases, 164.

A young Brahman widow was confined of a child. The chief constable of Police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it. It was also held in this case that the chief constable's statement, that he "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused. Action of the Police censured.

Reg. v. Askur & another, S. W. R. 1864, Cr. R. 12.

There can be no conviction for abetment of murder without proof of murder.

Proceedings of 19th May 1881. Weir, 102.

The law of British India, differing from the law of England, does not regard every case of homicide as *primâ facie* murder: it throws on the prosecution the burden of proving a certain intent or knowledge.

Circumstances defined in which a Magistrate should or should not commit a case in which death has resulted from injury voluntarily inflicted.

It is not competent to a District Magistrate to direct a subordinate Magistrate to dispose of a case in a particular manner, *e. g.*, by commitment.

Wansarapu Baladu & others, Appellants. Weir, 104.

Mere presence as a member of a gang which had committed murder, is insufficient to support a conviction for murder. It must be shown that murder was the common object of the gang, and that the accused did some act in furtherance of the common object.

Golla Sanyasi, Appellant. Weir, 105.

Where the accused, a menial servant, accompanied his masters with the intention of rendering such assistance as might be required, when the latter had announced their intention of committing murder, Held, that the accused was properly convicted of murder.

Kammari Karmappa, Appellant. Weir, 106.

Where murder was the common object of the gang to which the accused belonged, and murder was committed, but the accused took no part in the crime, beyond being present and assisting in the burial of the body, Held, that the accused were not guilty of abetment of murder, but were guilty of an offence under section 201 of the Penal Code.

Daude Gangadu, Appellant. Weir, 108.

Where there is nothing more than a fatal result to indicate an intention to cause death, &c. and where no weapons are used, it is unsafe to convict of murder.

Muvvala Kondayya. Weir, 110.

In the case of certain classes of injuries resulting in death, *e. g.*, injuries of which death is not a natural or ordinary consequence, there must be (to support a conviction for murder) a specific finding of the intention to cause death.

Tangara, Appellant. Weir, 115.

Where a fatal wound was given in a fight, cruel and unusual means being used, and there had been grave but not sudden provocation: Held, that the offence amounted to murder.

Ganduva Nayako, Appellant. Weir, 117.

A belief in having been the viction of witchcraft during a period extending over 3 or 4 months held not to constitute provocation sufficient in its nature and suddenness to reduce the offence to culpable homicide not amounting to murder.

Ghuntappa, prisoner. Weir, 118.

Where the accused's concubine refused to abandon another connection, and the accused, after remonstrating with the woman and leaving her, followed and killed her with a dagger, which he stated he had purchased with the intention of killing her: Held, that though the provocation may have been grave, it was not of so sudden a character, as to reduce the offence to culpable homicide not amounting to murder.

Moni Prodhano, prisoner. Weir, 119.

Grave provocation arising from grave injuries extending over a long series of years, held insufficient, in the absence of evidence of recent and sudden provocation, to reduce the offence to culpable homicide not amounting to murder.

Reg. v. Ramcoomar Chung & others, Ind. Jur. O. S. Dec. 1862.

If the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity.

NEGLIGENCE.

Nidamarti Nagabhushanama prisoner, 7 Mad. Rep. 119.

Prisoner killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide because the violence was not such as the prisoner must have known to be likely to cause death. Held, that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Session Judge convicted the prisoner on the charge of causing death by a rash act. Held, that the section was wholly inapplicable.

"Culpable rashness" and "culpable negligence" distinguished.

The Court delivered the following judgment:—In this case the prisoner killed his own mother by beating and kicking her. The Session Judge finds that the death resulted from a brutal beating and kicking, but he acquits of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. This is, it is manifest, no ground for acquitting of culpable homicide not amounting to murder. With such knowledge the act would be murder (Penal Code, section 300, 2ndly). The question for the Judge was, whether the act was done with the intention of causing bodily injury which was likely to cause death. The Judge finds the brutal beating and kicking and dragging by the hair of the head, of an old woman of 60, by a powerful man, who so acted without the smallest provocation. The casual connexion between the brutal assault, and the death, is found to be undoubted, but the Session Judge has convicted the prisoner under the new section of causing death by a rash act. This section is, in our opinion wholly inapplicable to the facts of this case. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness *(luxuria)*. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had, he would have had the consciousness. The imputability arises

from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception. We have had great hesitation whether we ought not to have remitted this case for a finding, whether the Session Judge and the assessors think that the act was done with such knowledge as to constitute culpable homicide. We are, however, averse to re-opening criminal cases unless absolutely compelled to do so, and as the evidence makes out, at least, a case of culpable homicide not amounting to murder, and a legal though inadequate sentence has been passed, we are able under section 426 of the Procedure Code (XXV of 1861) simply to dismiss the appeal.

As this is neither a case of rashness, nor of negligence, it becomes unnecessary to consider, whether in any case a conviction under this new section can properly follow, where the rashness or negligence, amounts to culpable homicide. It is clear, however, that if the words "not amounting to culpable homicide" are a part of the definition, the offence defined by this section consists of the rash or neglegent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death.

Empress v Ketabdi Mundul, 4 I. L. R. Calc. 764.

This was a reference to the High Court under section 287 of Act X of 1872.

It appeared that a female child of eight or nine years of age, who had not arrived at puberty, was the wife of the prisoner. She was brought by her father to the prisoner's house for the purpose of being left there. But, in consequence of her distress, her father remained for the night. At night the child and the accused went inside the house; the fathers of both the child and the accused remaining outside in the verandah. After midnight, the child leaving the house, apparently with the intention of going home to her father's house, got into a canoe, which sank and left her in the water; from which she was rescued by the prisoner's father and brought back to the house by the prisoner. The prisoner having pulled her into the house, kicked her on the back with his bare foot, from which kick the child fell down and died almost immediately.

From the medical evidence it appeared that the child was quite healthy, and that she had died from rupture of the anterior coat of the stomach caused by external violence, which might have resulted from a violent kick with a bare foot; there was also a slight wound on the head, and a bruise on the back of the neck, and it was stated by the medical officer that the child had not had connection with a man. The prisoner was committed on the charge of culpable homicide. The Sessions Judge was of opinion that the case did not amount to culpable homicide, in as much as the prisoner had no intention to cause death, and had not the knowledge that the act was likely to cause death. He, therefore, convicted the prisoner

under section 304A., and sentenced him to one year's rigorous imprisonment, because the prisoner, in carrying out his intention to cause hurt, committed a rash act which, even if he did not know it to be likely to cause death, was of a nature not altogether unlikely to lead to that result. On the case coming up before the High Court, it was held that section 304A. of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person.

If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly, involving danger to others, but which in themselves are not offences, may be offences under sections 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.

Reg. v. Brojonarain Pubraj, 2 S. W R. Cr R. 51.

A conviction under section 289 of the Penal Code, quashed, in as much as the evidence did not allude to the negligence of which the accused had been found guilty, and because the evidence was not taken in the presence of the accused.

Larrymore A. W. v. Pernendoo Deo Rai, 14 S. W. R. Cr. R. 32.

The actual driver, and not the owner of a carriage, is liable under section 279 of the Penal Code, in case of a collision and injury to another arising out of rash driving.

Chand Mandal, petitioner, 19 S.W.R. Cr. R. 1.

The High Court refused to interfere with an order passed under section 289 of the Penal Code, by a Magistrate fining the owner of a pony, which had been tied negligently, which was running about loose in a crowded bazar, and thereby endangering the lives and limbs of persons,—that section referring not only to savage animals, but to any animal.

Reg. v. Mussamat Pemkoer, 5 N W. P. Rep. All. 38.

Where there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered. Held, that there was not sufficient evidence to bring her within section 304 A. of the Indian Penal Code. The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such over-feeding; such feeding was inconsistent with the terms of section 304 A. which provides for the causing of death by any rash or negligent act, not amounting to

murder. What a man does with the knowledge that the consequences will be likely to cause death, cannot be reduced to a simply rash and negligent act.

Reg. v. Acharjys, 1 I. L. R. Mad. 224.

In the course of a trivial dispute, the accused gave the deceased a severe push on the back, which caused him to fall to the road below, a distance of two and a half cubits. In falling, the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. Held, that on these facts the accused was not guilty of the offence described in section 304 A. of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following and *a fortiori*, no designed causing of it.

Proceedings of 8th April 1867—3 Mad. Rep. App. 33.

To sustain a charge under section 289 of the Indian Penal Code, there should be evidence not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt.

Proceedings of 17th August 1871. 6 Mad. Rep. Rul. 32.

Defendant was convicted under section 338 of the Indian Penal Code, of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 P. M. That the carriage was being driven at an ordinary pace, and in the middle of the road; that the night was dark, and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over and killed. Held, upon a reference, that the question for the Court was, whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.

Reg. v. Khoda Jagta et al. 1 Bom. Rep. 137.

Boatmen who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under section 282 and not under section 336 of the Indian Penal Code.

Reg. v. Natha Lalla, 5 Bom. Rep. Crown Cases, 67.

Held, that the word "injury" (rashly caused by fire, &c.,) in section 285 of the Indian Penal Code includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only.

Reg. v. Chamberlain, 10 Cox C. C. 486.

There must be a competent knowledge and care in dealing with a dangerous drug. If a person was ignorant of the nature of the drug he used, or was guilty of gross want of care in the use of it, he would be criminally responsible for the consequences.

The prisoner, professing himself to be a herbalist, administered arsenical ointment to a woman having a tumour, of which she died. He gave her no caution or directions as to the use of it. The Judge directed the jury, that if the prisoner administered the arsenic without knowing or taking the pains to find out what its effect would be; or if, knowing this, he gave it to the deceased to be used by her without giving her adequate directions as to its use, he would be guilty of culpable negligence, and therefore of manslaughter.

Proceedings of 10th July 1867. Weir, 95.

Inoculation is not in itself an illegal or negligent act. On proof of a negligent dealing with the patient or patients after inoculation with the knowledge or belief required by the section, the operator or a third person may be liable under the section.

Proceedings of 5th March 1880. Weir, 99.

Where an animal in respect of which the offence is charged (section 289, I. P. C.) is of a kind which is domesticated and is usually allowed to go at large without special precautions, some evidence must be given of the existence of an abnormally vicious disposition.

Empress v. Upendro Kisto Dutt, Indian Medical Gazette, May 1883, Vol. XVI.

This case was tried before Mr. Justice Norris in the High Court, Calcutta, at the 2nd Criminal Sessions in April 1883. The accused, who held the L. F. P. and S. Glasg. and L. R. C. P. Edin., was arraigned under four counts. The first charged him with having, on the 26th November, 1882, committed culpable homicide not amounting to murder, by causing the death of one Hem Chunder Dutt, by administering an injection of carbolic acid with the knowledge that by such act he would cause death; the second, that he caused the death of the child by administering carbolic acid in a negligent manner; the third, that he caused grievous hurt to the child; and the fourth, that he voluntarily caused hurt to the child. All the facts of the case appear in the editorial article in the *Indian Medical Gazette* for May 1883 and which is quoted in extenso :—

"The facts of the case were as follows: The boy Hem Chunder Dutt was 5 years of age, and to all appearance he was in good health, but he had occasional slight bloody diarrhœa on and off for a week or so before the accused saw him on the 26th November, and a few thread-worms had been voided. For these symptoms he had been treated by Dr. D. C. Shome, the well-known teacher of midwifery at the Campbell Medical School. On the 26th there was again some appearance of blood in the motions, and the father of the child again called Dr. Shome, but as the latter could not be found, the father went for the accused, who is his cousin. When they reached Mr. Dutt's residence they met the child on the stairs, and were greeted by him with the words "Papa has brought a new doctor," and the boy ran to his father.

The history of the case having been related to Mr. U. K. Dutt (the accused), he proceeded to examine the child's liver and spleen, which he pronounced to be healthy. He then called for some carbolic acid and an enema syringe. The acid was measured out by him and mixed with warm

water—one part of the acid to sixty of water. This was at about 4 in the afternoon. The administration of the enema was now commenced by U. K. Dutt, and continued by the father till 24 ounces of the fluid were injected according to Mr. C. C. Dutt, but only 18 ounces according to the prisoner. The latter quantity was accepted by the legal representative of either side during the trial. It is therefore with it, 18 ounces of a 1 in 60 solution, representing 144 grains of carbolic acid, that we have to deal. A few minutes were occupied in administering the injection, and during the operation the child was asked if he felt any pain; he replied in the negative by gesture. U. K. Dutt then withdrew the tube and pressed the anus to cause retention of the fluid. How long the anus was thus held is uncertain, but the pressure was at any rate maintained for a couple of minutes or so, and probably the administration of the enema occupied some 5 minutes. While the enema was being retained by pressure, and shortly after the child had intimated that there was no pain, his head suddenly dropped on one side, and there was a state of complete collapse. The pressure was at once removed, but no fluid returned from the rectum. An attempt to administer brandy failed, and the accused sent for his hypodermic syringe with the object of injecting ether. Some half hour subsequently to the administration of the enema, the father of the child, in a state of wild alarm, left the house to seek further medical aid, and upon his return, the prisoner stated to the father that he had succeeded in pressing some of the fluid from the abdomen through the anus. About 1½ hours after the child had collapsed, that is at 5.30 P. M., Dr. Coates, Principal of the Medical College, arrived.

From this period we have Dr. Coates' narrative, which was briefly as follows:—

He found the child insensible, lying on its back, breathing with great difficulty and completely motionless, save for a twitching of the eyes. The extremities were cold, but the body was warm, and the whole surface was perspiring and of a purple colour. Artificial respiration was at once commenced under Dr. Coates' orders by U. K. Dutt, while Dr. Coates injected 40 ounces of olive oil up the bowel, but only 2 or 3 ounces of this quantity were voided when the instrument was withdrawn. Upon passing his finger up the rectum the sphincter showed no disposition to contract, nor the fluids in the bowel to come away. Upon introducing a catheter guided by the finger high up into the large gut, the oil and carbolic acid passed away freely through the tube, brought out mainly by pressure on the abdomen. More oil was sent for, and in the meanwhile milk and water were injected, and these also were removed by pressing the abdomen; no carbolic acid came away with this. All this time artificial respiration was being assiduously conducted. An electro-magnetic battery was also procured and brought into use. Grumous mucus accumulated in the throat, where it rattled to and fro with each respiration. Later, this also showed itself in the nostrils and mouth. This required to be cleared away by strips of cotton muslin wound round the finger passed down to and across the pharynx. There was total loss of reflex power. The powers of respiration seemed to be failing, and the heart-beats were quicker and more feeble. A catheter was passed down the œsophagus, and some milk which was injected, was removed by pressure on the stomach, together with a quantity of brownish

red mucus. A further quantity of milk injected was returned pure. The rattling in the trachea continued, and discoloured frothy mucus continued to exude from the mouth. It was still possible to count the pulse, which, however, became more and more feeble. Milk and ammonia were twice injected into the rectum. Such was the state of affairs till about 10 P. M., when Dr. Coates observed that the child's jaws contracted slightly upon his finger when inserted into the mouth for the purpose of clearing away the mucus, and shortly afterwards the bowels acted; some of the milk which had been previously injected and some greyish mucus being thus voided. The respirations which had been carried on with long pauses previously, now became rapid, but the pulse grew still more feeble and the countenance more livid. Artificial respiration was again established. The child appeared to be dying; more milk and ammonia were injected into the bowel. At midnight the accused left the house with Dr. Coates' permission. At 1 A. M. (27th) the child began to moan, to draw long inspirations, and seemed as though endeavouring to cough. An attempt to inject a little milk through the catheter into the stomach was followed by emesis, and this was succeeded by an improved pulse and better respiration. At about 2 A. M. the child began to revive a little, attempts were then made to induce the swallowing of a little soup, drop by drop; the child moved its arms, the eyes became steady, it recognised its mother, nestled its head in her lap, could hear when addressed, and he made some attempts to speak. Such was the condition at 3 A. M., when Dr. Coates left the house. From this hour till 7-30 A. M. the child was more or less conscious, but then a convulsion occurred, and death ensued.

During this latter interval he continued to swallow milk, soup and ice, and when asked what he would like, he said "soojee." He was quite lively, and complained of no pain of any kind. This continued till 5-30, when Dr. Ghose relieved Dr. Shome. The child then became restless, complained of great thirst; the extremities became cold, vomiting set in; the vomited matter was a dark-coloured thick fluid. Ice, sago and soup were given. The child often asked for pure milk, and Dr. Ghose ordered some. The pulse began to fail and the heart to flutter, Aromatic spirit of ammonia and a little brandy and water were given. Mustard was also applied to the precordial region. Convulsions began at this time. A hot water bath was ordered. It did not come in time; the convulsions were not violent or prolonged. Three or four convulsive attacks occurred, during one of which the child passed urine, which was dark and smoky in colour. The child also had a motion while unconscious. It was light in colour, scanty and thin. Respiration began to fail and artificial respiration was resorted to, but without avail.

Dr. Coates, whose evidence was first taken, was subjected to a long cross-examination, and after him Dr. Shome, teacher of midwifery in the Campbell School, Dr. Nundolall Day, Dr. Nicholson, the Police Surgeon, and Dr. Birch, Surgeon Superintendent of the General Hospital, were put into the box. The latter gentleman was called as an expert, and it was upon his and Dr. Coates' evidence that the case practically hinged, the two native medical gentlemen having chiefly given testimony as to occurrences witnessed by them, and Dr. Nicholson appearing in his official capacity.

Before entering into any discussion of the case, we may here express

our satisfaction that the taunt of doctors differing could not be applied in this case, in that there was practical unanimity throughout. Upon one or two matters of opinion there were of course slight shades of difference; but nothing amounting to variance or contradiction.

Neither Dr. Coates nor Dr. Birch had ever used injections of carbolic acid for thread-worms or dysentery, nor did they approve of the treatment. They were aware of the fact that French physicians have been employing gramme doses internally without fatal effects. Dr. Coates would not hesita to use an injection of 4 ounces of a 1 in 100 solution of carbolic acid as an enema, allowing its immediate escape, in the case of a child five years old. Dr. Birch stated that nothing would induce him to employ an enema containing 10 grains of carbolic acid for a child of the above age; he pointed out that if the immediate return of the whole or nearly the whole could be ensured, there would be nothing to prohibit the practice; but how, he asked, are we to ensure this greatly to be desired prompt ejection of the injected fluid? Neither of these witnesses approved of the use of carbolic acid for the treatment of thread-worms in either infants or adults: Dr. Coates because of Heller's observation that these parasites maintain active vitality when in contact with a strong solution, and Dr. Birch because a non-poisonous medicinal dose would be too weak to produce the death of the worms, and a solution strong enough and copious enough to act as a vermicide enema must necessarily contain an amount of acid sufficient to endanger if not to destroy the child's life. As regards idiosyncrasy both gentlemen agreed that it is a constitutional attribute which cannot be pre-determined, and that children are peculiarly susceptible to the action of carbolic acid, while Dr. Birch cited a case which he had recently attended in consultation with a well-known surgeon of this city, in which an abscess in the iliac region of a child aged 3 years had been opened by a mere puncture and the surface dressed with cotton soaked with a few drops of carbolic glycerine largely mixed with water; the child suffered from carbolic acid poisoning next day. He also mentioned a case which lately occurred in his practice where a nurse poured out and administered to a child of 2½ years a teaspoonful of carbolic oil in mistake for castor oil emulsion, with the result that although the stomach was almost instantly evacuated by an intelligent mother, some symptoms manifested themselves and great prostration succeeded. Dr. Coates though confident that the cause of death was carbolic acid poisoning, greatly regretted that a *post-mortem* examination had not been made, as it would have strengthened his conclusion. Dr. Birch did not entertain the shadow of a doubt that carbolic acid poisoning was the cause of death; a *post-mortem* examination would not strengthen his conviction, and he pointed out that *post-mortem* indications in these cases are chiefly negative, and would yield very little positive information. These were the points of difference, if differences they can be called.

The defence set up by the prisoner's Counsel was, that there was no proof that death resulted from carbolic acid poisoning; that if it was due to this cause, the death was one of mere accident dependant upon idiosyncrasy; and that the dose given was a perfectly proper one justified by authority.

In connection with the first of these pleas, an endeavour was made to cause the medical witnesses to admit that the mere shock of administering an enema, independently of its nature, might have produced the fatal re-

sult; but no impression was made upon the Judge or jury by this rather far-fetched line of argument; nor was anything elicited from the witnesses to give it countenance. It is perfectly unnecessary for us to devote space to discussing with professional readers the difference between simple shock and the coma, so vividly described by Dr. Coates under which the patient laboured; nor is the second alternative presented by Counsel worthy of more than passing note—that there might have been perforation of the bowel, already weakened by disease, by the injected fluid. The Judge very clearly pointed out in his summing up the improbability and inutility of such a plea, in that a child who had but a short time previously been running about cheerfully, whose illness was at most but an indisposition, was not at all likely to be the possessor of an intestine in such a state of disorganisation as this theory would assume; and that if death had been so produced by the prisoner, he would have been scarcely less culpable than if the charge upon which he was being tried had been fully borne out and proven. Great stress was next laid upon the fact that mistakes are sometimes made in diagnosis, that a person who is being treated for one disease may die of a totally different affection, or that the true nature of the disease may be only discovered on *post-mortem* examination, it having never previously been suspected. This led to a diatribe upon the absence of an anatomical examination of the body, and we must say we agree with the learned Judge that a *post-mortem* examination ought to have been made under the Coroner's order, and that is to be regretted it was not made; though we also concur with the opinion expressed by Dr. Birch that it would have been more useful for the purpose of clearing up doubts from the lay-mind than of value in adding to the certainty of the medical opinions as to the cause of death.

It is not our intention to discuss the symptoms of this case in detail, and to compare them with the investigations of toxicologists who have paid especial attention to the subject of this poison. We may, however, briefly refer our readers to Prof. Boehm's article in vol. 17 of Ziemssen's Cyclopædia, and to Reichert's Analysis of 66 cases of carbolic acid poisoning in the American *Journal of Medical Science*, vol. IV of 1881, for detailed and accurate information. Boehm writes: "In acute poisoning with large quantities of the poison, loss of consciousness and of voluntary movements set in, as a rule, in a very few minutes. Those poisoned sink into a comatose condition in which general sensibility and reflex movements are completely abolished. The breathing is described as being stertorous by most observers, or if consciousness is not entirely lost, is very laborious and dyspnœal" * * * "Death succeeds and terminates this comatose condition without any other very striking symptom. The skin is cool, covered with sweat, and exhibits a livid colour; urine and fæces are obstinately suppressed, vomiting is one of the most constant symptoms, and occurs principally, it seems, at the beginning of the poisoning. In the earlier stages of the poisoning, the pulse is generally strikingly slow; later on it is generally quickened. The repeated filling up of the mouth with foam, observed in Jeffrey's and Hainworth's cases, may be ascribed to salivation, which has been observed in most cases of poisons which kill by asphyxia." Reichert shows that vomiting occurs in 20 per cent., and convulsions in one-third of the cases.

That the child died of carbolic acid poisoning seems abundantly clear, and in this connection we may state our conviction, in opposition to one of

the theories of the defence, that the child did not suffer from dysentery at all, but that the rectal irritation and slightly streaked and occasional bloody motions were probably occasioned by the presence of thread-worms. When dysentery ends fatally, it does so through deterioration of the general health, and the child dies worn out by more or less long illness, unless some complication arises. Then it was suggested that the convulsion which preceded death, was the result of the presence of thread-worms, and that it had nothing to do with the preceding occurrences or treatment!

Other considerations which were pressed upon the jury, were the free mode in which carbolic acid is used for intra-uterine injections, and as an application to the uterus, for the washing out of large abscesses of the liver and empyemas and so forth; but we need not enter into anything like discussion of these points, for if there is one law more imperative than another connected with practice, it is that before any intra-uterine injection is attempted, the os and cervix uteri must be freely dilated, and free provision made for the instant flowing away of the fluid as rapidly as introduced—a mere washing out is adopted, and the minimum of contact aimed at. As to liver abscesses and empyemas, Dr. Birch very properly reprobated the practice of washing out, and he correctly stated that Mr. Lister strongly condemns the practice as being dangerous. The subject of the treatment of wounds was also introduced—for instance, it was rather triumphantly related that there is high authority for the washing out of the wound of a compound fracture with a 1 in 20 solution, prior to the application of the permanent dressings. Assuredly, if there be any truth in Listerism, this is sound practice; and further, it is free from risk—sound, because it disinfects the wound, and free from danger, because it is merely momentary, and the very minimum of absorption only can take place, in that the surface of the wound is protected by the coagulation of the serum-albumin by the acid. In fact the stronger the solution, when thus used, the less the danger of absorption.

The question of idiosyncrasy is so mixed up with that of dosage, that we must consider them together, and this brings us to the really important and interesting issues of the case. We do not hesitate to say that no question of idiosyncrasy really arose in the case. The dose was so enormous, so far removed from the border-land of safety, that, to the medical mind, idiosyncrasy is wholly shut out of the possibility of consideration. But let us enquire briefly into the subject.

In the first place, is the treatment of ascarides by carbolic acid enemata correct and proper? Our reply is, that it is both the one and the other, if the prescriber observe due care in the dose given and the mode of administration. Individually we have never adopted the treatment, and that for reasons which will presently appear, but this is beside the issue. A physician is perfectly justified in using this drug or any other within proper limits.

The accused is a young man, who we should have thought might reasonably be expected to rely upon the more recent text-books on medicine and therapeutics. We therefore refresh our memories by consulting Watson, Roberts, Bristowe, Tanner, Aitken, Guy, Harley, and Zeimssen, and to these we may add Cobbold, with the result that we find even no mention of this plan of treatment. We also consult the best and most recent authorities

upon diseases of children including Meigs and Pepper, Lewis Smith, West, Churchill, Day, and Eustace Smith, with like result. We next turn to the text-books on therapeutics including Waring, Ringer, Farquharson, W. G. Smith, Garrod, Lauder Brunton, Semple, Scoresby-Jackson, and Prof. H. C. Wood: Among this latter list the treatment is only mentioned by the two last-named authors, and what do they say? "Carbolic acid," says Scoresby-Jackson, "is also occasionally used as an enema for the destruction of ascarides in the rectum. It ought, however, to be so used with caution, in children especially; as fatal poisoning has resulted from this mode of treatment."

Prof. Wood writes, "it is the eminent combination of these qualities" (harmlessness to the patient and destructiveness to the parasite) "which renders the infusion of quassia so valuable in cases of seat-worms, whilst cabolic acid, though very efficient, should never be used against the same parasite, since it has greatly imperilled, if it has not destroyed the life of the patient when so employed." Now these and such like are authorities by which we might reasonably expect a very junior practitioner to be guided, and they certainly possess the respect of all, both senior and junior. Practically then we find that in the whole range of English text-book literature (several of these books being well up to date) none of the eminent authorities on medicine, the diseases of children or therapeutics, countenance the treatment, while two strongly and in terms condemn the use of carbolic acid enemata. But this is no condemnation whatever of the action of the accused; it constitutes no reason why he should not use any drug he chose, though it certainly is a reason why he should have solid grounds for this use of carbolic acid.

The medical witnesses condemned the use of the drug as employed, and as the defendant called no witnesses, he relied altogether upon authorities. Let us therefore examine the authorities who advocate the use of carbolic acid enemata for ascarides. Many were mentioned at the trial, and most of them in the first instance by Dr. Birch; but as the prosecution was precluded the use of books, save such as were quoted from by the defence, this part of the case was necessarily most imperfectly presented to the jury who were pretty considerably confused on the point. Now for the authorities:—(1.) Dr. Austin Flint gives a prescription for 20 grains of the acid in a pint of water, but he is careful to caution that "a full dose of oil be given before the injections are employed, to dislodge the worms from the cæcum and colon, and bring them within reach of the fluid injected into the rectum," obviously meaning that the injections must not be sent far up, and that their immediate return is calculated upon. This dose is intended for an adult, and could not therefore much help the defence, especially with the appended caution.—(2.) Napheys in his "Medical Therapeutics" quotes a prescription on the authority of Dr. Van Buren of from 10 to 20 grains in 8 ounces of water, and 1 of glycerine to be used as an enema in thread-worms, and it is added "it is sometimes necessary to increase the amount of carbolic acid."—(3.) Desplats of Lille (*vide Lancet*, August 26th, 1882, and *B. M. Journal*, February 10th, 1883) recommends two injections of half a gramme each daily in phthisis. By the mouth he gives 0·6 gramme in lemonade every three hours for typhoid fever and "in a few, one or two daily enemata of 0·50 to 1 gramme of phenol were given."

"*Dr. Desplats has never seen convulsions in any of his cases, not even in one where five grammes were given at a dose, nor in a child under two years of age where* 0·15 *grammes were given every three hours, the temperature being very high.*" We call special attention to this paragraph for a reason presently to be alluded to.—(3.) M. Ramonet (Braithwaite's Retrospect, vol. 2, 1882, p. XIX) gave injections of 15 grains each for typhoid fever in Algeria.—(4.) Mr. Pearse (*B. M. Journal* 1179, p. 852) gives 6 ounces of a 1 in 40 or 1 in 60 solution (= 48 to 72 grains) as an injection with an extraordinary courage "for within two minutes the patient complains of giddiness, singing in the ears, clammy skin and taste of acid in the mouth," &c., &c., and there is he says, "confusion of ideas for 24 hours." Dr. Birch characterised this man's treatment, to be "upon his own showing terrible recklessness," nor are we prepared to quarrel with this opinion.—(5.) Kempster of America (*Lancet* I, 69, p. 248) uses very minute doses—60 drops of a solution of 2 grains to the ounce are mixed with 4 ounces of water and used as an enema.—(6.) Lemaire employed an enema or 21 centigrammes (3·23 grains) dissolved in 125 grammes of water as an enema in the case of a child of 8 years, and in other cases 50 centigrammes (7·7 grains) in the same quantity of water.—(7.) Gratiolet thus "employed carbolic acid with success," Sansom tells us.—(8.) Dr. A. Wiltshire was quoted by the defence as given at p. 259 of Atkinson's therapeutics of gynæcology. It was merely stated that he used a carbolic solution of 1 in 60 for the destruction of ascarides, but the passage really stands as follows: "Ascarides are destroyed by a carbolic lotion (1 in 60), but general, rather than local treatment, should be relied upon for their eradication—iron, quinine, cod-liver oil, together with enemata of hamamelis, limewater, iron, &c." One or two more authorities which were not mentioned, might have been quoted; for instance, Dr. F. W. Warren (*Medical Press and Circular*, January 11, 1882) has employed large doses freely diluted (ʒss—ʒi *daily*) in ordinary drink or abundance of water during the "putrid stage" of typhoid fever. It is not, however, necessary to pursue this matter further, though Ebstein, Muller, Kranssold, Boese, Kunze, Zimm, Koeher and others are names deserving of mention as to the use of the drug in this connection. With the exception therefore of the wildly reckless general practitioner Mr. Pearse, who gives an injection of 72 grains, and whose own account proves his folly, we find no one who writes in the English language advising a dose beyond 20 grains, and that is by the rectum for adults. The defendant in the present case admitted having injected 144 grains, and that to a child of five years!

The statement of the practice by Dr. Desplats (77·16 grains doses) is so extraordinary that Dr. Birch expressed his disbelief in its accuracy, and we must confess we cannot conceive its being anything but perilous, if not fatal. Certainly in the presence of that general knowledge which all medical men should possess, it would be most unwarrantable to adopt this dosage without prolonged individual investigation and profound study of the subject.

The British Pharmacopæia lays down the dose at from 1 to 3 grains, and other authorities as to the dose are Dunlop (*Lancet* II, 82, p. 66) 1 to 2 grains. Keith (*Lancet* 1869, p. 143) 4 to 6 grains. Ebstein (*Medical Times* I, 75, p. 340) 5 to 7 grains. Barrant (*Lancet* I, 69, p. 136) 1 grain hypodermically. Husemann is stated by Boehm to consider 8 grains a dangerous

dose. Reichert has known "alarming symptoms" caused by 5 drops (*Lancet* 1881, p. 1006.) Langenbuch and Sonnenburg have shown that "the dangers of carbolic acid are chiefly seen in children and delicate women. Healthy adults mainly suffer from nausea, vomiting and headache, while children get severe collapse with sub-normal temperature to 36° and 34° cent., scarcely perceptible pulse, pallor and cold sweats." It is well-known that infancy, debility, anæmia and the female sex are conditions which greatly enhance the effects of carbolic acid on the system.

In addition to the authorities already quoted condemning the use of carbolic acid as injections we may mention Dr. Sansom who, in alluding to Dr. Kempster's minute doses, says: "The proportion thus employed was extremely small and could scarcely produce toxic effects; but looking at the danger which might occur from the chance employment of too large a dose, I do not think the treatment is to be preferred to that by harmless injections." Again, alluding to Desplats, half-gramme injections, the *Lancet* of August 26th, 1882, reports, that "in the discussion which followed at the Academie de Medicine M. Dujardin-Beaumetz expressed the opinion that the free use of carbolic acid in injections entailed a considerable risk of pulmonary congestion, and this opinion was corroborated by several speakers."

The fatal dose of carbolic acid was not discussed during the trial, as it might very usefully have been, in the face of the alleged doses (77 grains each) of Desplats, which so greatly impressed the Judge, and through him, the jury. Although it is true that we cannot fix any limits as regards the fatal dose, we have the records of several cases of adult deaths caused by one drachm doses: Reichert gives one. The *Lancet*, vol. I of 1879, p. 179, gives the case of a man who died in 12 hours after having taken one ounce of carbolic oil "containing a little over 60 drops of the acid." Sansom (p. 296) alludes to another. The *Berliner Klinische Wochenschrift* of April 1879, describes in detail Dr. Prætorius' case of a lady debilitated by a prolonged diarrhœa into whose bowel a solution containing 14 grains of the acid was injected, and whose life was for several hours in the greatest jeopardy, although the bowels were almost immediately voided. Severe and nearly fatal collapse ensued.

The Counsel for the defence quoted Ringer's direction for the administration of enemata with a view to showing that the defendant did rightly in pressing the anus for a time, as being the most effective means whereby to obtain a thorough and uniform contraction of the gut and thereby the ejection of the introduced fluid; but Dr. Birch pointed out that the direction quoted, though accurately correct as to the mode of dealing with a simple or stimulating enema, was absolutely dangerous when adopted with an enema which contained, as in the present case, a large quantity of a narcotic poison, which has the effect of paralysing the muscular coat of the intestine, while at the same time absorption is progressing. Inability to void the contents of the gut and general poisoning are the inevitable results, as happened here.

The quantity (18 ounces) was also brought forward as evidence that the defendant did not intend the enema to be retained. This again would be true as regards a simple enema, but it is to be recollected that the large quantity ensured the passage of the majority of the fluid past the rectum into the colon which presents a more absorbent surface than the former, and possesses feebler powers of expulsion.

It was accepted throughout the trial that whatever the dose by the mouth, double the quantity may be administered as an enema. Now as regards carbolic acid, we very much doubt this view. We know that substances in a perfect state of fluidity are absorbed with great rapidity by the bowel; but we are not acquainted with any experiments which deal with carbolic acid comparatively in this respect. This, however, we do know, that carbolic acid in solution is absorbed with great rapidity as soon as it comes in contact with any absorbent surface; and with this evidence before us, and nothing to the contrary, we are bound in our dealings to assume the rapidity of absorption to be as great by the bowel as by the stomach. Indeed we believe it to be so. Mr. Savory has brought to light the fact that some substances are absorbed more rapidly by the rectum than the stomach—strychnine in solution is a demonstrated example. The absorptive powers of the rectum, we believe to be greatly underrated. Flint reports a case in the *American Practitioner* of a woman kept alive for 1 year and 3 months exclusively by nutritive enemata, and Balthazar Foster has long advocated this treatment. This much is also certain as regards carbolic acid, that strong solutions are less dangerous than the weaker ones, as the latter are more rapidly absorbed, the former coagulating the albumin in the tissues and impeding absorption.

Our conclusion from the literature of the subject, from all the data we can collect, and from our practical experience, is that the dose given in the present case was monstrously in excess of all that is judicious. Giving full weight to the recorded experiences of others, it seems to us it may possibly be justifiable to administer one gramme (15·4 grains) doses; but that it is never justifiable to do so without, in each individual instance, carefully leading up to this quantity by the exhibition of cautiously increasing smaller doses, commencing in all cases with the pharmacopœial standard. We further think that the dose *per rectum* should not exceed that *per orem*, and that with our present knowledge as to the absorption of this drug, we are not justified in doubling the stomach dose when employing enemata.

Before concluding, we desire to make a few remarks upon the medical aspects of this trial. In the first place we hold that, to call upon a Judge and jury to decide a case of this kind, with the formalities demanded by the law, is to place them in an almost impossible position. Medical witnesses are called, men who have had years, from an unbiassed and ample platform, to accumulate their own experience and digest that of others. In opposition to their testimony, isolated passages are quoted from Journals, no matter how extreme may be the views advocated by the writers. The subject is all high Dutch to the jury, and these extracts (without the context) impress them profoundly; whether it be a Boehm or a Pearse who is quoted, it is all the same to them. Consequently the idea not unnaturally pervaded the minds of the Judge who expressed it, and of the jury, that this young licentiate appears among us as the representative of the more "advanced science" of the day, though it was manifest by the verdict that they held he had even left the van far behind. We have no quarrel with the verdict. God knows this young man has suffered most amply, far beyond the Judge's award, for his thoughtless error. We must, however, point out most emphatically that it is as much, if not more, the duty of the practitioner to be as well acquainted with the literature of the dangers of a drug as with that

of "advanced" ideas upon the subject of its use: and what are we to think when an isolated passage within the whole range of medical literature and journalism, is the only justification which can be discovered for—and even then it is but a distant approach to the full measure of—an exceptional (and in this instance, fatal) proceeding? We have italicised the quotation from the *British Medical Journal* of February 10th, 1883, on a former page, because it was upon this passage that the case was virtually decided. The Judge prominently called attention to it in his summing up as illustrative of the largest safe dose that the defence was able to refer to; he expressed his belief that it had been given, and he entered into a calculation showing that thus a dose of 154 grains is permissible as an enema to an adult, and therefore one-fourth that quantity, or 38·4 grains, to a child of 5 years of age. Of course this quantity is a long way removed from the 144 grains employed by the accused; but we must protest against the system, which allows any single passage which may happen to find its way into a medical journal to out-balance the expressed opinion of all medical witnesses and a host of the weightiest authorities—in fact, the general consensus of medical opinion. We believe that an injection of 38½ grains would imperil the life of any child of five, and kill a good many such children. Be it remembered that the dose which the Judge gave the jury as a working basis, is in excess of that which is known to have killed adults in several instances!

The jury found the prisoner guilty of the charge under the third count, namely, of causing death by a rash and negligent act; and they strongly recommended him to mercy. The Court sentenced him to a fine of Rs. 500.

OBSCENE BOOKS AND SONGS.

Empress v. Indarman, 3 I. L. R. All. 837.

A book may be obscene, within the meaning of the Penal Code, although it contains but a single obscene passage. The defence to a charge of selling and distributing certain obscene books was, that they were sold and distributed in good faith in prosecution of a religious controversy. Held, that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them. Also that the intention of the seller and distributor must be gathered from the character of the matter contained in such books. As he had chosen to sell and distribute what was obscene, it must be presumed that he intended the natural consequences of his act, namely, corruption of the minds and prejudice of the morals of the public. It was his public act that must be the test of his intentions, and having done an unlawful act, it was no answer to say that he thought it lawful. Reg. *v.* Hicklin (L. R. 3 Q. B. 360) and Steele *v.* Braman (2 L. R. 7 C. P. 261) followed. At the conclusion of the trial of a person for the sale and distribution of obscene books, the Court trying him ordered the destruction of certain copies of such books, voluntarily surrendered by him, under section 418 of the Criminal Procedure Code (Act X of 1872). Held, that such Court was not empowered by that section to make such an order.

Reg. v. Ganu bin Krishna Gurav and others, 4 Bom. Rep. Crown Cases, 25.

On a reference by a Session Judge, convictions and sentences by a Magistrate F. P. reversed, as the record of the case did not disclose that the accused had committed any offence.

OBSTRUCTING NAVIGATION.

Reg. v. Kabil Manjee & others, 2 B. L. R. A. Cr. R. 23.

To render a person liable to punishment under section 16 Act V (B. C.) of 1864, for obstructing the line of navigation of a Government canal, it must be shown that he wilfully obstructed the navigation.

Reg. v. Khader Moidin, 4 I. L. R. Mad. 235.

To spread fishing-nets by the side of a thoroughfare in a town is neither an offence punishable under clause 3, section 48 of Act XXIV of 1859, nor, without proof of obstruction caused to any particular person or class of persons, under section 283 of the Indian Penal Code.

OMISSION TO GIVE INFORMATION TO PREVENT OFFENCE.

Reg. v. Lahai Mundul & others, 7 S. W. R. Cr. R. 29.

The refusal of a person to join in a dacoity, does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment, under section 176 of the Penal Code, for intentional omission to give notice or information for the purpose of preventing the commission of an offence.

Phool Chand Brojobassee, petitioner, 16 S. W. R. Cr. R. 35.

Section 176 of the Penal Code, applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides, is intended to apply to parties who commit an intentional breach of such obligation.

Luchmun Pershad Gorgo, petitioner, 18 S. W. R. Cr. R. 22.

Intentional omission is the gist of the offence of a zemindar omitting to give information regarding an offence.

Reg. v. Ahmed Ali & others, 22 S. W. R. Cr. R. 42.

In a case in which the accused are charged with having omitted to give information which they were legally bound to give under section 90 of the Code of Criminal Procedure (Act X of 1872), it should appear what the offence is as to the commission of which, the accused wilfully omitted to give information; that the specified offence was in fact committed by some one; and that the accused knew of its having been committed.

Mudhoosoodun Chuckerbutty in re, 23 S. R W. Cr. R. 60.

The duty imposed by Act X of 1872, section 90 upon village headmen, &c., of giving information as to the occurrence of any sudden or unnatural death, is intended to apply only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, &c. Residence in a dwelling-house belonging to another, is not occupation of land within the meaning of the section. The liability of the resident agent of an owner, under the section, arises when the owner is not resident, and has no personal knowledge of the fact required to be reported; where the owner has such knowledge, the liability attaches to him.

Empress v. Sashi Bhusan Chuckerbutty, 4 I. L. R. Calc. 623.

The provisions of section 90 of the Criminal Procedure Code (Act X of 1872), should not be put in force against one who has omitted to give information to the police of an offence having been committed, in cases where the police have actually obtained such information from other sources.

Proceedings of 12th March 1867, 3 Mad. Rep. App. 30.

The Karman of a village is not bound to report the commission of offences other than those specified in section 138 of the Criminal Procedure Code (Act XXV of 1861). The village Munsif is bound to report the commission of all offences committed in his village to such person, and in such manner as may be most likely to be effectual for the apprehension of the offenders.

Govt. v. Kesree, prisoner, 1 N. W. P. Rep. (Agra) 37.

Held that the prisoner could not be punished under section 118 as there was no omission of an act which he was bound to perform which facilitated the commission of an offence, but that he should be convicted under section 176, Indian Penal Code, as he was bound to report under section 138, Act XXV of 1861, after he was informed of robbery.

Proceedings of 31st July 1880. Weir, 46.

An omission by an owner of a house to give information of a sudden or unnatural death, section 90, Criminal Procedure Code is not an offence under the section. (S. 176, Indian Penal Code.)

OFFENCES AGAINST PUBLIC JUSTICE.

Reg. v. Jagat Mal, 1 I. L. R. All. 162.

An offence against public justice is not an offence in contempt of Court within the meaning of section 473, Act X of 1872. The Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in sections 467, 468, 469, Act X of 1872, is not precluded by the provisions of section 471 from trying the accused person itself for the offence charged.

Reg. v. Kultaran Singh, 1 I. L. R. All. 129.

An offence against public justice is not an offence in contempt of Court within the meaning of section 473, Act X of 1872. But notwithstanding this the Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in sections 467, 468, 469, Act X of 1872 may not, except as is provided in section 472, try the accused person itself for the offence charged. The case of Sufatoolah, petitioner (22, S. W. R., Cr. R. 49) followed.

OFFENCES RELATING TO MARRIAGE.

Reg. v. Enai Bibee, 4 S. W. R. Cr. R. 25.

Held, by the majority of the Court that a woman who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband, without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under section 495 of the Penal Code.

Reg. v. Jadu Mussulmanee & Beedhy Bewah, 6 S. W. R. Cr. R. 60.

A nikah marriage falls within the purview of sections 494 and 495 of the Penal Code.

Reg. v. Kudum, S. W. R. 1864, Cr. R. 13.

Proof of dishonest or fraudulent intent is necessary for a conviction, under section 496 of the Penal Code, of falsely going through the ceremony of marriage.

The act of allowing the marriage to take place at one's house does not amount to the abetment of an illegal marriage.

Mutty Khan v. Mungloo Khansama, 5 S. W. R. Cr. R. 50.

Enticing or taking away, with a criminal intent, a wife living in her husband's house, or in a house hired by him for her occupation and at his expense, during his temporary absence, is punishable under section 498 of the Penal Code, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her.

Reg. v. Kallychurn Potial, 7 S. W. R Cr. R. 59.

Case of a person convicted of adultery on his own admission coupled with the evidence.

Reg. v. Pochun Chung, 2 S. W R. Cr. R. 35.

A person convicted of adultery under section 497 of the Penal Code, need not be convicted also under section 498, far less where there is no taking or enticing away of the woman.

Reg. v. Shookoo Aurut, 18 S. W. R. Cr. R. 9.

Where a woman was convicted of marrying a second time during her first husband's lifetime, the High Court, while thinking it not necessary to reduce the punishment passed by the Sessions Judge, observed that, taking the circumstances of the case into consideration, the extreme youth of the accused, and the influence she was no doubt subjected to, a nominal punishment would have sufficed.

Sheikh Moneeroodeen v. Ramdhun Bajeekur and others, 18 S. W. R. Cr. R. 28.

The *nikah* form of marriage is well-known and established among Mahomedans. The issue of a *nikah* marriage would be legitimate under the Mahomedan law.

Reg. v. Madhub Chunder Giri Mohunt, 21 S. W. R. Cr. R. 13.

There is no rule that a convicted person cannot institute criminal proceedings. In a case of adultery, sexual intercourse must be proved; the sexual intercourse required for adultery being the same identical thing as the sexual intercourse required for rape. It is not necessary that there should be direct evidence of an act of adultery, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman.

Reg. v. Mothoora Nath Roy, 22 S. W. R. Cr. R. 72.

A finding exactly in the words of section 498 of the Penal Code,—that the prisoner took or enticed away a married woman from her husband or some person having the care of her on his behalf with intent that she may have illicit intercourse with any person, or concealed or detained such woman with a like intent,—though not actually illegal when it is doubtful which of the several offences has been committed, is a finding which ought not to be resorted to, if it can be avoided and it can be determined under which part of the section the prisoner is guilty.

Reg. v. Luckhy Narain Nagory, 24 S. W. R. Cr. R. 18.

The fact that a charge under the Indian Penal Code, section 497, was triable with assessors and not by a jury, would not affect the legality of a conviction of adultery before a jury.

Quære.—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with Act X of 1872, section 478?

Williams v. Williams & Couran, 3 I. L. R. Calc. 688.

Whilst on the one hand there is no absolute limitation in the case of a petition for dissolution of marriage; yet the first thing which the Court looks to when the charge of adultery is preferred, is, whether there has been such delay as to lead to the conclusion that the petitioner has either connived at the adultery, or was wholly indifferent to it; but any presumption arising from apparent delay may always be rebutted by an explanation of the circumstances.

Empress v. Pitambur Singh, 5 I. L. R. Calc. 566; S. C. 5 C. L. R. 597.

The provisions of section 50 of the Evidence, (Act I of 1872) show, that where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved. Reg. *v.* Wazira overruled, (8 B. L. R. app. 63).

Bissuram Koiree v. The Empress, 3 C. L. R. 410.

Sagai wives, *i. e.*, widows married in accordance with the custom of Sagai prevailing amongst the Koiries and other low castes of Behar, are so far the legal wives of their husbands as to justify the punishment of persons committing adultery with them.

Mussamut Chamia, Appellant in re, 7 C. L. R. 354.

A conviction under section 494 of the Indian Penal Code, for marrying again, during the lifetime of a husband or wife, cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void.

Reg. v. Peterson, 1 I. L. R. All. 316.

The act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where therefore a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.

Empress v. Thompson, 2 I. L. R. All. 339.

N. charged T. with having committed adultery with his wife. On inquiry into the charge by the Magistrate, the case was committed to the Sessions Court for trial when T. was convicted. T. appealed to the High Court. After conviction N. and his wife were reconciled, and N. at the hearing of the appeal asked for leave to compound the offence. Held, that at that stage of the case sanction could not be given to withdraw the charge.

Reg. v. Muthavan, & others, 1 I. L. R. Mad. 191.

The offences of enticing away a married woman with a criminal intent and of criminal breach of trust, are not offences which may lawfully be compounded.

Koraga v. The Queen, 6 I. L. R. Mad. 374.

In the absence of very clear evidence of custom, which, if well founded, must be a matter of general notoriety, the cohabitation of a man with a woman under the Alyasantana system cannot be considered marriage so as to render punishable, under section 498 of the Indian Penal Code, a person who entices away the woman, with the intents specified in that section.

Reg. v. Sambhu Raghu, 1 I. L. R. Bom. 347.

Courts of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bonâ fide* belief that the consent of the caste made the second marriage valid, does not constitute a defence to a charge under section 494 of the Indian Penal Code, of marrying again during the lifetime of the first

husband, or to a charge of abetment of that offence under that section combined with section 109.

Government of Bombay v. Ganga, 4 I. L. R. Bom. 330.

The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband; she cannot, therefore, during his lifetime enter into any other valid marriage contract. Her going through the ceremony of *niká* with a Mahomedan is, consequently, an offence under section 494 of the Indian Penal Code.

Empress v. Umi & others, 6 I. L. R. Bom. 126.

A member of the caste of Ajanya Rajput Guzars residing in Khandesh executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under section 494 of the Indian Penal Code, (XLV of 1860); and that the priest who officiated at that marriage was an abettor under sections 494 and 109.

Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.

Reg. v. Kumarasami, 2 Mad. Rep. 331.

Upon an indictment under section 498 of the Indian Penal Code, charging that the prisoner took away one A. who was then, and whom he then knew to be, the wife of one M. with the intent that he might have illicit intercourse with the said A. Held, that there was a taking, within the meaning of the section, although the advances and solicitation had proceeded from the woman and the prisoner had for some time refused to yield to her request.

Proceedings of 8th Nov. 1866, 3 Mad. Rep. App. 7.

A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian.

Sundara Dass Tevau, petitioner, 4 Mad. Rep. 20.

In a charge under section 498 of the Penal Code, the words of the section "conceals or detains" must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife, for purpose of illicit intercourse, is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.

Proceedings of 13th July 1869, 4 Mad. Rep. Rul. 55.

The death of the husband does not necessarily put an end to a prosecution for adultery under section 497 of the Penal Code.

Proceedings of 10th Feb. 1870, 5 Mad. Rep. Rul. 17.

Where the Session Judge directed the committal of the defendant for adultery, the defendant having been already convicted by the Magistrate of enticing away. Held, that the sentence passed by the Magistrate should have been at once annulled, the requisite intention in the one case being the substantive delict in the other.

Proceedings of 21st March 1871, 6 Mad. Rep. Rul. 20.

A Hindu priest was charged with knowingly and wilfully solemnizing a marriage between persons one of whom professed the Christian religion, the said priest not being duly authorized under section 6 of Act V of 1865, an offence punishable under section 56 of the same Act. The Session Judge discharged the accused without trial, on the ground that the enactment in question was inapplicable to the celebration of a marriage according to the Hindu form by a Hindu priest, though one of the contracting parties was a Christian convert. Held, that this view of the law was erroneous, and that the accused was *primâ facie* liable under section 56 of the Act.

Reg. v. Karsan Goja, 2 Bom. Rep. 117. Reg. v. Bai Rupa.

Held, that a custom of the Talapda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (*nátrá*) with another man during the lifetime of her first husband and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and that such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable, as regards the woman, under section 494 of the Indian Penal Code; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery, under section 497.

Reg. v. Manohar Raiji, 5 Bom. Rep. Crown Cases, 17.

Where a prisoner accused of adultery, sets up in defence a *nátrá*, contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is, whether or not the accused *honestly believed*, at the time of contracting the *nátrá*, that the woman was the wife of another man.

Reg. v. Ramlo Jerio, 5 Bom. Rep. Crown Cases, 27.

Where the husband of a woman, with whom the accused was alleged to have committed adultery, professed himself unwilling to proceed with the prosecution, and the Assistant Session Judge thereupon ordered the accused to be discharged:—the Court, in the exercise of its discretion declined to interfere.

Proceedings of 7th Febry. 1871. Weir, 407.

A minor husband cannot be represented by another for the purpose of instituting a prosecution for adultery. (But see now section 199, Act X of 1882.)

Reg. v. Smith, 1 Ind. Jur. N. S. 8. S. C. 4 S. W. R. Cr. R. 31.

The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. Strict proof of marriage is necessary.

Proceedings of 28th June 1870. Weir, 219.

Section 494 requires proof of a second marriage in the lifetime of the husband or wife, and of the invalidity of such marriage, by reason of the husband or wife being alive.

Empress v. Kallu, 5 I. L. R. All. 233.

K. was accused by D., and P. alleged to be D.'s wife, of raping P., and was committed for trial charged in the alternative with rape or adultery. The evidence of marriage between D. and P. consisted of their statements that they were married to each other, and of a statement by K. that P. was D.'s wife. K. was convicted on the charge of adultery. Held, that such evidence, having regard not only to section 50 of the Evidence Act, 1872, but to the principle that strict proof should be required in all criminal cases, was not sufficient to establish the vital incident to the charge of adultery, namely, the marital relation of D. and P. *Empress* v. *Pitambur Singh* (I. L. R. 5 Calc. 566) concurred in. Also that, as no complaint had ever been actually instituted by D. against K. for the offence of adultery, as contemplated by section 478 of Act X of 1872 (Criminal Procedure Code), (the circumstance of D.'s appearing as a witness for the prosecution for the offence of rape, not amounting to the institution of a complaint within the meaning of that section), K.'s conviction for adultery must be quashed.

Empress v. Arshed Ali, 13 C. L. R. 125.

To justify a conviction under section 498 of the Indian Penal Code, it is not sufficient for the prosecution to prove that the complainant and the woman in respect of whom the charge is made, lived together as man and wife. It is necessary that facts constituting a valid marriage should be proved in accordance with section 50 of the Evidence Act.

See Pitamber Singh in the matter of (5 C. L. R. 597) (F. B.) S. C. (I. L. R. 5 Calc. 544.)

OFFENCES AGAINST PUBLIC HEALTH.

Empress v. Halodhur Poroe & others, 2 I. L. R. Calc. 383.

The words "public spring or reservoir" used in section 277 of the Indian Penal Code, do not include a public river. The strewing of branches in a river for fishing purposes held, therefore, to be no offence under that section.

Proceedings of 13th Decr. 1878. Weir, 96.

Mere bathing in a tank, not set apart by any lawful order for bathing purposes, without anything further, is not an offence under section 277.

BENGAL SECRETARIAT LIBRARY

Fishing in a tank does not constitute the offence (section 277, Indian Penal Code), unless there is evidence that bait of a foul kind was used.

Srinivassa Naik accused. Weir, 97.

Cultivating paddy in the bed of a tank, the water of which was used as of right by the public for drinking purposes, held to amount to an offence under sections 277 and 291.

Ramatripati accused. Weir, 97.

OFFENCES ON THE HIGH SEAS.

In prosecuting a British subject for an offence committed on board a British ship upon the high seas. Held, 1 (*dubitante* PHEAR, J.) that he must be charged with an offence under English law; 2, that the punishment must be according to the procedure of the local Court.

Reg. v. Thompson, 1 B. L. R. O. Cr. R. 1.

Therefore where a British subject was charged before the High Court with having committed an offence under 7 William IV and I Vict. C. 85, S. 2 on board a British ship upon the high seas, within the Admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vict. C. 19, S. 5. Held, that the conviction was good and that the prisoner was rightly punished with "rigorous imprisonment" which is defined by section 53 of the Indian Penal Code, to be "imprisonment with hard labour," and that the trial had been rightly proceded with under Act XIII of 1865.

The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vict. C. 124, section 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court.

Reg. v. Elmstone Whitwell et al., 7 Bom. Rep. Crown Cases, 89.

The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship, when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.

An offence committed on the high seas but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Indian Penal Code.

Reg. v. Kastya Rama et al. 8 Bom. Rep. Crown Cases, 63.

The ordinary criminal Courts of the country have jurisdiction over such offences by virtue of the Stat. 12 and 13 Vict.

C. 96, SS. 2 and 3, extended to India by Stat. 23 and 24 Vict. C. 88. *Semble.*—The Governor-General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate in respect of offences committed on the high seas within three miles of its coasts. Meaning and effect of Stat. 12 and 13 Vict. C. 69, SS. 2 and 3 considered Reg. *v.* Thompson (1 Beng. L. Rep. O. Cr. J. 1) commented on. Where certain of the inhabitants of the village of Manori, in the Thana District, sallied out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held (1) that a Magistrate F. P. in the Thana District had jurisdiction over the offenders; (2) that the Indian Penal Code was the substantive law applicable to the case; and (3) that the offence amounted to mischief within the meaning of sections 425 and 427 of that Code.

Reg. v. Anderson not reported.

In May 1879 John Anderson, a British subject, was convicted by the High Court of Calcutta of the crime of man-slaughter on board the American barque "*C. O. Whitmore*" on the high seas. In July 1879 the United States Minister in London objected, on behalf of his Government to the exercise of jurisdiction by the High Court of Calcutta in that case as a breach of comity, and contending that, as regards common crimes committed on board merchant vessels on the high seas, the competent tribunals of the vessel's nation had exclusive jurisdiction, whatever might be the nationality of the offender. The matter was referred to the Government of India, who reported that Anderson was tried by the High Court under the Admiralty Jurisdiction Act 12 and 13 Vic. Cap. 96, as extended to India by the Act of 23 and 24 Vic. Cap. 88 and the Government of India, in support of their view that in the present case jurisdiction was rightly exercised under that Act, referred to the case of a British subject named Murphy, who was tried by the Calcutta High Court in 1867 for an offence committed by him on board the American ship "*Nonantium*" on the high seas, and to the opinion of Sir Travers Twiss and Mr. W. Forsyth on that case; but they added, however, that the course of subsequent Parliamentary legislation seemed adverse to their view, and that, as the matter was open to doubt, they suggested that an authoritative ruling should be obtained from Her Majesty's Law officers as to the proper construction of the Act 12 and 13 Vic. Cap. 96.

The first question submitted by the Government of India was, whether the High Court at Calcutta had jurisdiction to try a British subject for an offence committed by him on the high seas on board a foreign vessel to which he belonged; or in other words, whether the jurisdiction of the Admiralty extended to offences committed on the high seas on other than British ships.

The second question was whether, having regard to the decision in Tirnan's case (33 L. T. M. C. 201) that the word "jurisdiction" in the Extradition Clause of the Ashburton Treaty meant exclusive jurisdiction, Her Majesty's Government might decline to surrender a fugitive to the United States Government under that clause in a case where there was concurrent jurisdiction, notwithstanding the provisions of sections 6 and 27 of the Extradition Act, 1870.

The third question was whether, supposing that Her Majesty's Government were not bound to give up the fugitive in such a case, they had power to do so under the Extradition Act above referred to.

The Law officers of the Crown reported as follows :—

1. "That in our opinion the jurisdiction of the Admiralty does not extend to offences committed on the high seas in other than *British* ships. The jurisdiction of the Admiralty cannot, we think, be held to reach foreign vessels of every kind on board of which any crime may have been committed on the high seas; and though the words of a British Statute may seem large enough to cover all offences committed on the high seas, the meaning of those words must be limited and applied only to *British ships* which are on the high seas, and not within territorial waters.

2. "Having considered the provisions in sections 6 and 27 of the Extradition Act, 1870, the decision in Tirnan's case and the Ashburton Treaty (Article X), we are of opinion that Her Majesty's Government may not properly decline to surrender a fugitive to the United States Government in a case where there is concurrent jurisdiction.

3. "And we think Her Majesty's Government has the power to surrender a fugitive, where there is concurrent jurisdiction, under the Extradition Act, 1870. We are not prepared to say that a statute conferring jurisdiction on the Court of the country of the offender in the case of offences committed on the high seas on board a foreign vessel, or in places within foreign jurisdiction, would violate any principle of international law or comity. On the contrary, we are of opinion that there are many cases in which the conferring of such jurisdiction would subserve the purposes of justice, and be quite consistent with the principles of international law and comity. But the right to exercise such a jurisdiction in cases where the extradition has been properly demanded, is a totally different matter, and that right should, in our opinion, be, if ever, most sparingly exercised."

OFFENCES RELATING TO WEIGHTS AND MEASURES.

Reg. v. Damodhar Dalji, 1 Bom. Rep. 181.

The mere possession of weights in excess of the authorized standard will not support a conviction under section 266 of the Penal Code; a fraudulent intent must be charged and proved.

Government v. Kangalee Maduk and others, 18 S. W. R. Cr. R. 7.

Intention is an essential part of the offence of fraudulently using false instruments for weighing, and in the absence of any evidence of such intention in this case, the Court quashed the conviction and directed the return of the fines.

Achi accused. Weir, 95.

Selling by means of an unstamped measure does not, in the absence of evidence of fraud or of the falsity of the measure constitute an offence under the section (S. 265, Indian Penal Code).

OFFENSIVE TRADES.

Proceedings of 4th February 1870. 5 Mad. Rep. Rul. 16.

The continuing of offensive trades in premises already used, is not an offence under section 114 of Madras Act, X of 1865. The section only applies to the fresh dedication of premises to certain offensive trades.

Aucheen & Bungloo, Appellants, 1 Ind. Jur. N. S. 59.

A general notice by advertisement to persons carrying on a noxious trade is not sufficient. Such persons should be directly informed not only that their trade is noxious, but also their business must be removed.

PLEAS.

Reg. v. Bodhee Khan, 5 S. W. R. Cr. R. 79.

Voluntarily intoxication is not a valid plea in extenuation of an offence (section 85, Indian Penal Code).

Reg. v. Jaipal Koiree, 11 S. W. R. Cr. R. 6.

In a case of causing grievous hurt to B., the prisoner, on having the charge read to him, made a statement in which he stated that he had had a quarrel with B. and struck him twice with a stick in anger. Held, that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed and the case remanded for trial.

Reg. v. Hossein Ali, 8 B. L. R. Ap. 25.

Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge.

Reg. v. Mittun Chowdhry, 11 S. W. R. Cr. R. 53.

Where a prisoner pleads guilty, but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty.

Reg. v. Raj Koomar Moitro, 3 S. W. R Cr. R. 28.

The mere absence of any formal charge of using insulting language, in addition to the charge of criminal trespass, is no such irregularity as to vitiate a trial, the said language having been complained of by the complainant at the first.

Reg. v Roopa Gowalla, 15 S. W. R. Cr. R. 42.

An accused should plead by his own mouth and not through his Counsel or pleader, though his Counsel or pleader may at the proper time address the Court on his behalf.

Clark v. W. Beane, 5 S. W. R. Cr. R. 53.

A Deputy Magistrate ought to give an opportunity to a prisoner to plead that he is an European British subject. The mere statement of a prisoner that he is an European British subject, made before the Deputy Magistrate after the trial had been completed cannot be acted on.

Empress v. Gopal Dhanuk, 7 I. L. R. Calc. 96, S. C. 8 C. L. R. 411.

A prisoner charged under section 211 of the Penal Code with having brought a false charge with intent to injure, by accusing A. of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under section 304A., stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea as required by section 237 of the Criminal Procedure Code, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under section 304A. Held, that the conviction was bad.

Reg. v. Cheit Ram, 5 N. W. P. Rep. All. 110.

The prisoner having admitted before the Court of Sessions that he had killed his wife, no assessors were impannelled. At the end, however, of his confession he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder, that in committing the murder he knew that he was doing a wrong act, convicted the prisoner. Held, that the plea was, in effect one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed.

Reg. v. Hearn, 3 N. W. P. Rep. All. 128.

In a prosecution under the Indian Police Act, V of 1861, the Magistrate is bound to take into consideration and determine a prisoner's plea that he is a European British subject. Section 29 of Act V of 1861, does not give to the Magistrate jurisdiction over European British subjects.

Turnbull, prisoner, 6 Mad. Rep. 7.

The prisoner pleaded that he was a British-born subject and therefore not amenable to the jurisdiction of the Session Judge of Tellicherry, by whom the prisoner had been convicted of criminal misappropriation. The evidence showed that the prisoner was the legitimate great-grandson of John Turnbull, said to have been a serjeant in the service of the King or of the East India Company, but was insufficient to establish a lawful marriage between him and a native Christian woman by whom he had a son, and the evidence as to his nationality was also incomplete. Held, that the plea to the jurisdiction was not made out.

Proceedings of 14th Sept. 1881. Weir, 302.

Where an accused pleads guilty to the specific offence with which he is charged, he cannot on such plea be convicted of an offence other than that specifically charged.

POISONING.

Reg. v. Dhania Daji, 5 Bom. Rep. Crown Cases, 59.

Held, that a person who placed in his toddy-pots juice of the milk-bush knowing that if taken by a human being it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under section 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure;" and that section 81 which says that "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.

Per Curiam :—We are of opinion that section 328 of the Indian Penal Code, applies to this case. It says that whoever causes to be taken by any person any poison, &c. knowing it to be likely that he will thereby cause hurt, shall be punished &c. In order to meet this definition it is not necessary that the hurt should be caused to any particular person intended, or that the person injured or likely to be injured should have been previously known. The accused, with the object of punishing or detecting the stealers of his toddy, mixed a poisonous drug with it, supposing that they might drink it; and he must have known it to be likely that it might be drunk by others, and that they would suffer in consequence. We consider, therefore, that he "caused it to be taken," within the meaning of the section.

Empress v. Imambu, 4 I. L. R. Bom. 167.

Convictions under section 11 of Bombay, Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the Town and Island of Bombay before Magistrates of the first class.

PREVIOUS CONVICTION.

Reg. v. Hurpal, 4 S. W. R. Cr. R. 9.

Held by the majority of the Court (CAMPBELL J. dissenting) that section 75 of the Penal Code only applies to convictions of offences committed after the Code came into operation.

Reg. v. Jehan Mullick, 5 S. W. R. Cr. R. 67.

Records of previous convictions should not be put in until the prisoner has been convicted in the case then under trial.

Reg. v. Naimuddi Sheikh, 14 S. W. R. Cr. R. 7.

To warrant a sentence awarding an additional punishment, under section 75 of the Penal Code, as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code, must be clear and precise.

Reg. v. Pubon, 5 S. W. R. Cr. R. 66.

An offender is only liable to enhanced punishment, under section 75 of the Penal Code, for an offence punishable under chapter XVII after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter.

SETON-KARR and GLOVER, JJ.: ... ."The meaning of the law appears to us to be that when an offender, after having been punished with imprisonment for a crime under chapter XVII, again, *after his release from prison*, commits a similar description of crime or a crime punishable under the same chapter, he is liable under section 75 to enhanced punishment, on the ground that the sentence already borne has had no effect in preventing a repetition of his crime and has been, therefore, insufficient as a warning. But where the prisoner's conviction has taken place a very short time before, and where no imprisonment under it has yet been undergone, and no time has been given for reformation, it cannot be said, that a prisoner has had any opportunity of shewing what the effect of the first sentence would have been upon him, and it would not be just to punish him as though he were an incorrigible offender whom no comparatively light punishment could wean from evil courses."

Reg. v. Sheikh Ramzan, 6 B. L. R. Ap. 15; S. C. 15 S. W. R. Cr. R. 53.

A kaifut, or report from the record office that A. had been convicted of a crime, is no evidence of a previous conviction.

Reg. v. Shiboo Mundle, 3 S. W. R. Cr. R. 38.

Records of previous convictions should not be put in until the close of the trial, as they can only be used after conviction in determining the measure of punishment.

Reg. v. Moluck Chund Khalifa, 3 S. W. R. Cr. R. 17.

To justify enhanced punishment under section 75 of the Penal Code on account of previous conviction, both convictions must be of offences punishable under chapters XII and XVII of the Code, and committed after the Code came into operation.

Reg. v. Rajcoomar Bose, 19 S. W. R. Cr. R. 41.

Under section 439, (Act X of 1872), if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.

Reg. v. Damu Haree, 21 S. W. R. Cr. R. 35.

Section 75 of the Penal Code, is restricted to offences under chapters XII and XVII of that Code, when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences, nor can any case be brought within it merely because the punishment that may be given for it extends to three years and upwards.

Reg. v. Esanchunder Dey, 21 S. W. R. Cr. R. 40.

The fact of previous convictions should, under Act X of 1872, section 439, be stated in the charge, when it is intended to prove them for the purpose of enhancing punishment. The question of proof of previous conviction is one of fact which ought to go to the jury and must be determined by a jury.

Shamjee Nashyo, Appellant, 1 C. L. R. 481.

Where, soon after the release on expiry of a sentence of seven years' imprisonment on conviction of "receiving stolen property acquired by dacoity," a person is convicted of house-breaking, and theft, he is sufficiently punished by a sentence of seven years in transportation; a sentence of transportation for life is too severe.

It is not the intention of the Legislature that a previous conviction should so enormously enhance the heinousness of petty offences.

Empress v. Megha, 1 I. L. R. All. 637.

Held that, where a person commits an offence punishable under chapter XII or chapter XVII of the Indian Penal Code, punishable with three years' imprisonment, and, previously to his being convicted of such offence commits another such offence punishable under either of such chapters he is not subject on being convicted of the second offence to the enhanced punishment provided in section 75 of the Indian Penal Code.

Empress v. Ram Dayal, 3 I. L. R. All. 773.

A person, having been convicted of an offence punishable under section 457 (chapter XVII) of the Indian Penal Code, was subsequently guilty of an attempt to commit such an offence. Held, that the provisions of section 75 of the Indian Penal Code were not applicable to such person.

Empress v. Nana Rahim, 5. I. L. R. Bom. 140.

(MELVILL, J. *dissentiente.*) If a person, who has been convicted of an offence punishable, under chapter XII or XVII of the Indian Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence he does not thereby become liable to the enhanced punishment allowed by section 75 of the Code.

Reg. v. Kushya bin Yesu, 4 Bom. Rep. Crown Cases, 11.

A prisoner convicted under section 380 of the Indian Penal Code, of theft in a building used for the custody of property, was sentenced under section 75 to fourteen years' transportation, as he had been previously convicted thirteen times of offences now punishable under chapter XVII of the Code, with imprisonment for three years or upwards :— Held that, as all the previous convictions were prior to the passing of the Indian Penal Code, the present offence was not punishable under section 75.

Empress v. Budhun Rujwar, 10 C. L. R. 392.

An accused person can only be punished under section 75 of the Indian Penal Code where the previous conviction has been under that Code.

Empress v. Kristo Behari Dass, 12 C. L. R. 555.

Per Curiam :—In trials before a jury or assessors the record should invariably show that reference to previous conviction was not made until the accused had been convicted of the subsequent offence.

Yippaka Daligadu, accused. Weir, 373.

In charging an accused with a previous conviction or convictions, it is not sufficient to state in the charge that the accused is an old offender and where the previous convictions are denied, the prosecution is bound to prove that there were such convictions and that the accused was the person convicted.

Proceedings of 27th April 1865. Weir, 16.

Section 75 of the Penal Code, does not authorize a Magistrate to exceed his ordinary jurisdiction. A previous conviction is not a distinct offence for the purpose of section 314 of the Code of Criminal Procedure.

Proceedings of 21st July 1868. Weir, 17.

A previous conviction of attempt to commit an offence does not bring an accused person within the provisions of section 75 of the Penal Code.

Proceedings of 24th Dec. 1874. Weir, 18.

Section 75 requires that both the previous and subsequent offences shall be offences of the class punishable with imprisonment for a term of three years or upwards.

Proceedings of 20th Jan. 1875. Weir, 18.

A prisoner cannot be charged for the purposes of section 75 of the Penal Code with a conviction of an offence committed subsequent to the date of the offence for which he is on his trial.

The liabilities to additional punishment under section 3 of Act VI of 1864 and section 75 of the Penal Code are distinct matters.

Proceedings of 1st Nov. 1876. Weir, 19.

A prisoner convicted of theft cannot be sentenced under section 75 of the Penal Code to imprisonment for a term exceeding six years.

Tsappidi Peratadu, Appellant. Weir, 20.

Section 75 of the Penal Code construed. Judgment :—In a case of theft in which the prisoner is liable on account of previous convictions to enhanced punishment, the ordinary sentence extending only to imprisonment of three years' duration, the Court may, under section 75, pass a sentence of six years' imprisoment or transportation for life. No term of imprisonment in excess of six years or of transportation for less than life can be imposed. This was the case to which the Sessions Judge refers as having been disposed of at the Sessions of the High Court. In the case now in appeal, the offence itself (Indian Penal Code, section 457), admits of a sentence of seven years' imprisonment being imposed. This, as the prisoner is liable to enhanced punishment for former offences of the class specified in section 75 might be doubled, but for the proviso that such double punishment shall not carry with it a period of imprisonment in excess of ten years. Ten years' imprisonment (which may be commuted to transportation

for the same period) is therefore the limit of punishment by way of imprisonment imposable, unless the Court determines that the case is one which calls for a sentence of transportation for life.

Proceedings of 27th July 1877. Weir, 21.

The provisions of section 75 are confined to offences punishable under the Penal Code.

Proceedings of 20th Feby. 1878. Weir, 21.

No distinct sentence of imprisonment is awardable on account of a previous conviction. It is merely a circumstance rendering the offender convicted of a subsequent offence, liable to a larger measure of punishment.

Karappan Ambalagaran & 9 others, Appellants. Weir, 22.

The proviso to section 75 read with section 59 of the Penal Code, renders illegal a sentence of transportation for a term exceeding 10 years when not amounting to trasportation for life.

Dudakula Ankumalla Jangiligadu, accused. Weir, 23.

The ruling in High Court Proceedings 1st November 1876, followed.

Sheo Saran Tato v. The Empress, 9 I. L. R. Calc. 877.

The object of section 75 of the Indian Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the puuishment for the offence committed is in itself sufficient.

PUBLIC SERVANT.

Reg. v. Kalla Chand Moitree, 7 S. W. R. 99.

Convict warders are "public servants" within the meaning of section 223 of the Penal Code.

Reg. v. Hurrikishen Dass, 15 S. W. R. Cr. 62.

Before a conviction can be had under section 228 of the Penal Code of offering an insult to a public servant, it must be proved that there was an intention to insult.

Reg. v. Methi Mullah, 13 S. W. R. Cr. R. 49.

A Collectorate peadah, who had been deputed to keep the peace during a distraint, was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his purwanah. Held, that they were rightly convicted under section 353 of assaulting a public servant while in the execution of his duty.

Dukhoo Peon v. Chundro Kant Chowdhry & others, 3 S. W. R. Cr. R. 68.

Court peons may pursue into the yard of a lodging-house the door leading into which is open, a prisoner who has escaped from their custody. The offence of obstructing a public servant in the discharge of his public functions, is not cognizable by a Magistrate, except with the sanction or on the complaint of the Court or public servant concerned, or if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior.

Joynath v. Soojaram, 8 S. W. R. Cr. R. 66.

Conviction under section 186 of the Penal Code, of obstructing a mouzadar in the discharge of his duty, reversed, there being nothing to show that the mouzadar is a public servant.

Reg. v. Chota Hurry Pramanick Tantee, & another, 15 S. W. R. Cr. R. 5.

No conviction can be had under section 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly and take up the time of the Court.

Abelakh Lall & others v. Sirnam Singh, 15 S. W. R. Cr. R. 50.

Where an order had been made by a Magistrate under section 318 of the Code of Criminal Procedure, (Act XXV of 1861) in favour of A. in respect of certain land, and B. subsequently obtained an order from the Collector declaring him entitled to the same land, in pursuance of which, he was put into possession by an officer of the Collector; it was held, that before B. could be convicted under section 188 of the Penal Code, of disobeying an order made by a public officer, it should be proved that B. was aware of the order under section 318, and that having that knowledge he disobeyed it.

Reg. v. Dwarkanath Ghose, 20 S. W. R. Cr. R. 49.

Money received by a mohurrir, appointed under the Registration, Act IX (B. C.) of 1872 by way of fees for registering deeds, is money entrusted to him as a public servant.

Empress v. Amiruddeen, 3 I. L. R. Calc. 412. S. C. 1 C. L. R. 483.

It is sufficient for the purpose of a conviction under section 217 of the Penal Code, that the accused has knowingly disobeyed any direction, of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that in point of fact the person so intended to be saved, had committed an offence, or was justly liable to legal punishment.

Empress v. Butto Kristo Dass & another, 3 I. L. R. Calc. 497.

A person appointed by the Government Solicitor, with the approval of Government, and under an arrangement made by the Governor-General in Council, to act as Prosecutor in the Calcutta Police Courts, is a public servant within the meaning of section 21 of the Indian Penal Code.

Empress v. Municipal Corporation of Calcutta, 3 I. L. R. Calc. 758; S. C. 2 C. L. R. 520.

A Municipal Corporation is not a public servant within the meaning of section 39 of Act IV of 1877 (Presidency Magistrate's Act), and may therefore, be prosecuted under the Penal Code, without the preliminary sanction of the Government required by that section.

Modun Mohun in re, 4 I. L. R. Calc. 376.

The manager of a Court of Wards estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B. a poddar in the Bank demanded and took a reward for his trouble in receiving the money. On B. being prosecuted and charged under section 161 of the Indian Penal Code, held, that although the money might have been paid on account of Government, it was on behalf of the Bank, and not on behalf of the Government, that the money was received by the accused; and that the poddar was a servant of the Bank only, and not a public servant within the meaning of clause 9 of section 21 of the Penal Code.

Reg. v. Mahmood Hossein, 2 N. W. P. Rep. All. 298.

The Naib Nazir is a public servant within the meaning of section 409 of the Indian Penal Code, and not the mere private servant of the Nazir.

Govt. v. Abdool Huq & another, N. W. P. Rep. 1868, Feb.

The convictions and sentences quashed on the ground, that the charge was not sustained by the evidence. It is not shown that they caused or intended to cause loss or damage to the public or to any one; their offence is rather neglect than a crime, and might be punished under the Police Act.

Reg. v. Jaganath, 7 N. W. P. Rep. All. 132.

The public servant concerned in an offence described in section 185 of of the Indian Penal Code, is not competent himself to try the person committing such offence.

Raminihi Nayar in re, 1 I. L. R. Mad. 266.

Where a village accountant and a village munsif's peon had been convicted under section 217 of the Indian Penal Code of having disobeyed the direction of law contained in section 90 of the Criminal Procedure Code (Act X of 1872). Held, that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. The direction of law mentioned in section 217, Indian Penal Code, means a positive direction of law, such as those contained in sections 89 and 90 of the Criminal Procedure Code, and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge.

Reg. v. Auba bin Bhivrav, 4 Bom. Rep. Crown Cases, 6.

Held that prevarication while giving evidence does not constitute the offence, under section 228 of the Indian Penal Code, of intentionally causing interruption to a public servant sitting in a judicial proceeding.

Reg. v. Pandu bin Vithoji, 4 Bom. Rep. Crown Cases, 7.

Held that refusing or neglecting to return direct answers to questions does not constitute the offence, under section 228 of the Indian Penal Code, of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding.

Reg. v. Bhagvandas, 5 Bom. Rep. Crown Cases, 51.

Conviction and sentence under section 186 of the Indian Penal Code reversed, as the conduct of the accused refusing to accompany a measuring clerk employed under Act I of 1865 (Bombay) to his (the accused's) house and permit it to be measured—did not constitute the offence of obstructing a public servant in discharging his public functions.

Quære:—Whether section 11 of Act I of 1865 (Bombay) justifies surveyors in entering private houses for the purpose of measuring them.

Reg. v. Nantamram Uttamram, 6 Bom. Rep. Crown Cases, 64.

Au engineer who receives and pays to others municipal moneys is a public servant within the meaning of section 21, clause 10 of the Indian Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.

Reg. v. Dhori Kullan, 9 Bom. Rep. 165.

The refusal of a cart-owner to give his cart on hire to a Government officer, does not constitute the offence of obstructing a public servant in the discharge of his public functions, within the meaning of section 186 of the Indian Penal Code.

Reg. v. Ramajirav Jivba Jirav & another, 12 Bom. Rep. 1.

The word "officer" in section 21, clause 9 of the Indian Penal Code means a person employed to exercise to some extent a delegated function of Government: he must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. Hence an *Izaphatdar*, *i. e.*, a lessee of a village, who has undertaken to keep an account of its forest revenues, and pay a certain proportion to Government, keeping the remainder for himself, is not an officer, and, therefore, not a public servant within the meaning of section 21.

Reg. v. Abdool Juleel, S. W. R. 1864, Cr. R. 5.

It is only necessary for a conviction under section 217 of the Penal Code, to show that the prisoner knew that the person he released was in danger of punishment, and that the prisoner released such person with the intention of saving him.

Proceedings of 23rd April 1879. Weir, 371.

In a case where a Subordinate Magistrate was insulted in the course of a trial, and the Sub-Magistrate proceeded to act under section 436 (Act X of 1872), but was unable, owing to the offender having left the Court-house, to record any statement from the latter, explanatory of his conduct: Held, that the dismissal of the case on the ground of no such explanatory statement being recorded was improper.

Proceedings of 10th May 1881. Weir, 56.

A vaccinator is a public servant within the meaning of sections 186 and 21 (clause 8) of the Penal Code.

Thulukana Chetti. Weir, 56.

Dissuading other persons from undergoing vaccination, or allowing their children to undergo vaccination, is not an offence under this section.

Komati Ramannah, accused. Weir, 57.

Where the act sought to be done, is not one which the person seeking to do it is legally authorized to do, an obstruction to the doing of the act is not an illegal obstruction.

Sadr Proceedings, 28th April 1862. Weir, 90.

Prevarication or retraction of statements in giving evidence does not constitute the offence under section 228.

Proceedings of 14th August, 1868. Weir, 90.

For the purposes of section 228 the judicial proceedings are not necessarily at an end when the sentence is passed, but continue until the prisoner is discharged, or removed in custody.

Proceedings of 17th Jany. 1870. Weir, 91.

Making signs from outside the place in which the Court sat to a prisoner on his trial, does not constitute an offence under section 228.

Proceedings of 21st Octr. 1870. Weir, 92.

Leaving a Court when ordered to remain, is no offence under section 228.

Proceedings of 30th Novr. 1878. Weir, 92.

Absence from Court in disobedience to a summons, is not an interruption to the Judge sitting in Court within the meaning of section 228.

Proceedings of 19th May 1881. Weir, 94.

To constitute the offence, (section 228, Indian Penal Code), it must be proved that the act charged, was done intentionally and with intent to insult.

Empress v. Anandlall Bera, 10 I. L. R. Calc. 18. S. C. 13 C. L. R. 209.

A person was convicted under section 183 of the Penal Code, for offering resistance to the attachment of property by a public servant. The offence was committed on the 4th of February 1883, but the warrant under which the public servant acted, was returnable on or before the previous day. Held, that the conviction was bad.

Empress v. Mazhar Husain, 5 I. L. R. All. 553.

A public servant in charge as such, of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents, with the intention of screening himself from punishment. Held, that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under section 218 of the Penal Code, nor, such documents not being forgeries, as they were not made with the intent specified in seetion 463, could he be legally convicted under section 471.

PUBLIC WORSHIP.

Sundram Chetti v. The Queen, Ponnusami Chetti v. The Queen, 6 I. L. R. Mad. 203.

In affording special protection to persons assembled for religious worship or religious ceremonies, the law points to congregational rather than private worship, and it may fairly be required of congregations, that they should inform the Magistrate or Police, at what hours they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed. No sect is entitled to deprive others for ever of the right to use the public streets for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night.

The duties of a Magistrate in cases where the public peace is likely to be disturbed by one sect attempting to prevent another from using the public streets for processions discussed. The principles laid down in Muthialu Chetti *v.* Bapun Saib (2 I. L. R. Mad. 140) explained and approved.

RAPE.

Reg. v. Akbar Kazee, 1 S. W. R. Cr. R. 21.

Sexual intercourse by a man with a woman without her free consent, *i. e.*, a consent obtained without putting her in fear of injury—amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory.

Reg. v. Baney Madhub Mookerjee, 1 S. W. R. Cr. R. 29.

Held to be improbable and physically impossible, that a girl of tender age should be killed by any violence in rape, and not show any external signs of violence.

Reg. v. Bissorunjun Mookerjee, 6 S. W. R. Cr. R. 75.

The dying declaration of a deceased person is admissible in evidence on a charge of rape.

Reg. v Jhantah Noshyo, 6 S. W. R. Cr. R. 59.

The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female.

Reg. v. Meriam, 1 B. L. R. A. Cr. 5; S. C. 10 S. W. R. Cr. R. 10.

A. was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under section 59 of the Penal Code, to transportation for the same term. Held that, under sections 376 and 511 of the Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted under section 59 to transportation for a longer term.

Empress v. Shankar 5 I. L. R. Bom. 403.

An indecent assault upon a woman, does not amount to an attempt to commit rape, unless the Court is satisfied, that there was a determination in the accused to gratify his passions at all events; and in spite of all resistance. Rex *v.* Lloyd (7 Car and Pay) followed.

Rex v. Lloyd, 7 Carrington, & Payne's Rep. 318.

On an indictment for an assault with intent to commit a rape, evidence that the prisoner on a prior occasion had taken liberties with the prosecutrix, is not receivable to shew the prisoner's intent. In order to convict on a charge of assault with intent to commit a rape, the jury must be satisfied, not only that the prisoner intended to gratify his passions on the person of the prosecutrix, but that he intended to do so at all events, and notwithstanding any resistance on her part.

RIGHT OF PRIVATE DEFENCE.

Reg. v. Dhununjai Poly, 14 S. W. R. Cr. R. 68.

The right of private defence under section 103 of the Penal Code, is restricted by section 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Reg. v. Goburdhun Pari, 14 S. W. R. Cr. R. 74.

Where the offence which occasions the right of private defence of property is criminal trespass, the right of defence under section 104 of the Penal Code, only extends (subject to the restrictions of section 99) to the voluntarily causing to the wrong-doers some harm other than death.

Reg. v. Gurucharan Chang, 6 B. L. R. Ap. 9; S. C. 14 S. W. R. Cr. R. 69.

The prisoners, who in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crop, and when they had no time to complain to the police, inflicted a wound on one of them with a bamboo from the effects of which the man died, were convicted by the Sessions Judge, under sections 148 and

304 of the Indian Penal Code. The High Court acquitted the prisoners, holding that the force used, or the injuries inflicted, were not such as to exceed their rights of private defence of property.

Reg. v. Hussamudy, 17 S. W. R. Cr. R. 46.

The firing of a gun at persons at a distance of twenty-five yards, without a reasonable apprehension of danger, and without any necessity for so doing, is not justifiable by the right of private defence.

Reg. v. Kassinauth, 13 S. W. R. Cr. R. 64.

Where A. trespassed on the lands of B. whose servants seized and confined A. till the following day, when B. gave information to the Police, it was held that the conduct of B. and his servants in confining A. could not be supported on the ground that they were exercising the right of private defence of property under sections 97, 104, and 105 of the Penal Code.

Reg. Kurrim Bux, 3 S. W. R. Cr. R. 12.

The prisoner in exercising his right of private defence of property, caused the death of a thief, who was seized in the act of committing a burglary in his house, and was convicted by the Sessions Judge of culpable homicide not amounting to murder, and sentenced to three years' simple imprisonment. The sentence was reversed on appeal, and the prisoner acquitted.

Reg. v. Moizudin, 11 S. W. R. Cr. R. 41.

The legal right of private defence of the body and property, is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a *latee*, which results in the death of the party attacking, and such right of private defence of the body extends, under section 100 of the Penal Code, to the taking of life when grievous hurt is reasonably apprehended.

Reg. v. Mitto Singh & others, 3 S. W. R. Cr. R. 41.

In an affray respecting land, one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. Held, that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and not being rioters or members of an unlawful assembly, they could claim the benefit of section 104, Penal Code.

Reg. v. Mokee, 12 S. W. R. Cr. R. 15.

When the accused, whose property had frequently been stolen, went out with a *latee* to watch his property, and with the *latee* struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th Exception of section 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by sections 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.

Reg. v. Pelkoo Nushyo & others, 2 S. W. R. Cr. R. 43.

A. commits no offence, if in exercising the right of private defence of his property against B. whom he finds near a hole in A.'s house, and, on being attacked by B. he strikes a blow at random and in the dark with a stick in his hand, whereby B. is killed. C. and D. by assisting

A. in removing the body of B. cannot be convicted (under section 201 of the Penal Code), of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender. Two other men, who helped him to remove the dead body, and were acccused of causing the disappearance of evidence knowing that an offence had been committed, under section 201, Penal Code, were also acquitted, for that section contemplates a belief that an offence has been committed; and as the first prisoner was acquitted of all offence, it may be presumed that the other prisoners did not believe that any offence had been committed.

Reg. v. Rajkristo Doss, 12 S. W. R. Cr. R. 43.

Where land in the possession of A. was encroached on by the servants of B. who committed mischief on the land, and the servants of A. assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A. of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under clause 4, section 105 of the Penal Code.

Reg. v. Sohun & Samoo, 2 S. W. R. Cr. R. 59.

In cases of hurt, or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of private defence.

Reg. v. Tanoo Shikdar, 3 S. W. R. Cr. R. 47.

Dispute between two parties (the Mollahs and Shikdars) in which the Shikdars attacked and killed one of the Mollahs when exercising the right of retaking their own property. Three of the Shikdars were also wounded. The Shikdars were convicted of culpable homicide not amounting to murder and of rioting. The majority of the Court held that the Mollahs were entitled to the protection conferred by section 101, Penal Code, on those who, while exercising the right of private defence, caused their assailants any harm other than death.

Reg. v. Tulsi Singh & others, 2 B. L R. A. Cr. 16, S. C. 11 S. W. R. Cr. R. 64.

A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force.

Reg. v. Gobardhan Bhuyan, 4 B. L. R. App. 101.

The right of private defence as described in section 97 of the Penal Code is subject to the restrictions mentioned in section 99, that is, it should be exercised only in the defence of one's own body, or that of another person against an offence affecting the human body. Under section 102, the right commences, on a reasonable apprehension of danger to the body, caused by an attempt or threat to commit an offence; and by section 99, clause 4, the right is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence.

Reg. v. Gourchand Chung & another, 18 S. W.R. Cr. R. 29.

The right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of section 100 of the Penal Code, and where the prisoners used deadly weapons (spears) and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs.

Reg. v. Dhaumun Teli & another, 20 S. W. R. Cr. R. 36.

Where a person assisted by a friend retaliated severely on another, who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence. Sections 96 and 104, Penal Code justifying him in causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence.

Reg. v. Ramlall Singh & others, 22 S. W. R. Cr. R. 51.

Under the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in clause 2, section 100, and clause 4, section 103, Penal Code, though in the exercise of such right he killed one of his aggressors.

Jamsheer Sirdar & others, 1 C. L. R. 62.

It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the occurrence must be given in evidence.

Empress v. Abdul Hakim, 3 I. L. R. All. 253.

A head constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more on the ground that they were poor and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound and the head constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head constable fired with a gun at such crowd when it was about five paces from him, and killed one of the gipsies, and having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd, would have ceased had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. Held, that such head constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head constable was guilty of culpable homicide amounting to murder.

Kalichurn Mookerjee & others in re, 11 C. L. R. 232.

Where the accused had been convicted of riot under section 148, and of grievous hurt under section 325 of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence, but in as much as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. Held, that, on the finding of the Sessions Judge, the accused were entitled to an acquittal.

Reg. v. Nowabdee, & others, S. W. R. 1864, Cr. R. 11.

The right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack.

RIOTING.

Reg. v. Azgar, 5 S. W. R. Cr. R. 19.

Conviction and sentence both for rioting and for grievous hurt upheld, the punishment being on the whole not more severe than might properly have been awarded if the conviction had been for grievous hurt only.

Reg. v. Bhunjun Pauray, 4 S. W R. Cr. R. 8.

Held by the majority of the Court (*dissentiente* SETON-KARR, J.) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves, who had been captured during the night, and in which murder was committed, was a premeditated attack, for which all concerned were liable to conviction for riot attended with murder.

Reg. v. Bokoo Sheikh & others, S. W. R. 1864, Cr. 21.

The prisoners having been part of an assembly of more than five persons, whose common object as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass (whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under section 147 of the Penal Code, and not under section 11 of Act V of 1857.

Reg Hurnath Roy, 3 S W. R. Cr. 54.

A zemindar ought not to be made liable, under section 155, Penal Code, for a sudden and unpremeditated riot, which there was no reason to infer he could have anticipated, or thought likely to happen.

Reg. v. Jeolall & others, 7 S. W. R. Cr. R. 34.

There can be no right of private defence, either on one side, or the other, in a case of premeditated riot.

Reg. v. Kalla Chand & others, 7 S. W. R. Cr. R. 60.

The offence of rioting, armed with deadly weapons, and stabbing a person in whose premises the riot takes place, are distinct offences, and punishable as separate offences under sections 148, 149 and 324 of the Penal Code. Section 149 being read as a proviso to section 148.

Meelan Khalifa v. Dwarkanath Goopto, 1 S. W. R. Cr. R. 7.

There cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code, would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.

Reg. v. Khemee Singh, 1 S. W. R. Cr. R. 19.

An assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting is committed.

Reg. v. Moorut Mahton & others, 8 S. W. R. Cr. R. 3.

In a case of rioting with deadly weapons, the one side found guilty of using them, and causing grievous hurt, are properly punishable more severely than the men of the other side.

Reg. v. Morly Sheikh, 6 S. W. R. Cr. R. 51.

A dismissal by one Court of the charge of riot against A. may be a bar to A.'s trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal. The dismissal by one Court of the charge of riot instituted by the Police, is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences. There is no right of appeal because the united sentences in three separate cases amount to more than a month's imprisonment.

Reg. v. Mullookram Doss, 1 S. W. R. Cr. R. 13.

The Court has no power to enhance a sentence (though it may consider it much too lenient) on persons convicted under sections 143 and 148 of the Penal Code.

Reg. v. Phoollee Misser, 12 S. W. R. Cr. R. 72.

Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out.

Reg. v. Seetaram Hazra, 1 S. W. R. Cr. R. 45.

It is not necessary that there should be a conviction of rioting in order to admit of a Magistrate taking recognizances to keep the peace.

Reg. v. Sheikh Bazu & others, 8 S. W. R. Cr. R. 47.

There had been a riot and fight between two factories, and some members of one party (A.) were charged with the murder of the leader of the other party (B.) and some members of the other party (B.) were charged with causing grievous hurt to the leader of A. Held, that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A.) and of party (B.) for trial all together upon joint charges as if they had one common object.

Reg. v. Durzoolla & others, 9 S. W. Cr. R. 33.

Where there is a riot and fight between two factions, the members of each party should be committed for trial separately and not all together.

Nilrutton Sein & others, petitioners, 16 S. W. R. Cr. R. 45.

Where the accused were convicted under section 147 of the Penal Code of rioting and also under section 353 of using criminal force to a constable who went to arrest them, the High Court set aside the conviction under the former section.

(But see now illus. (g.) to section 235, Act X of 1882 which is as follows :—

A. with six others, commits the offence of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A. may be separately charged with, and convicted of, offences under sections 147, 335 and 152 of the Indian Penal Code.

Reg. v. Khukree Ooram & others, 21 S. W. R. Cr. R. 48.

Where the only evidence for the prosecution was that of witnesses whom the Judicial Commissioner considered unworthy of belief,—it was held, that the prisoners, who were charged with rioting, ought not to have been convicted on the statements of the opposite party who were also charged with rioting, such statements not being evidence against the accused in this case.

Reg. v. Gholam Mahomed & others, 22 S. W. R. Cr. R. 17.

It is necessary, before persons can be convicted of rioting, &c., under sections 447 and 453, Penal Code, to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge; and it must appear on the evidence that they had a common object, which common object they were going to carry out by unlawful means

Reg. v. Aboo Sheikh & others, 23 S. W. R. Cr. R. 19.

Where a charge of rioting was tried summarily by the Magistrate as one of mischief and unlawful assembly, the Sessions Judge relying on a case cited, submitted at the request of the accused that the summary order might be set aside, and the accused might be tried for rioting under chapter XVII of the Criminal Procedure Code. The High Court declined to interfere at the instance of the accused persons, and dis-

tinguished this from the case cited by the Sessions Judge, as the reference there, was made by the Magistrate in the interests of public justice.

Khajah Noorul Hossein alias Khajah Waheed Jan v. C. Fabre-Tonnerre, 24 S. W. R. Cr. R. 26.

If a number of persons assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.

Ramadeen Doobay & others, petitioners, 26 S. W. R. Cr. R. 6.

The offence of rioting consists in the use of violence by an unlawful assembly or by any member thereof in the prosecution of the common object. But as in this case, there were never five persons assembled together to constitute an unlawful assembly, and the intention to use force does not appear to have been carried out, no offence under the Penal Code is established against the accused.

Reg. v. Sabed Ali & others, 11 B. L. R. 347, F. B.

One member of an unlawful assembly, whose common object was to eject certain persons from a piece of land the title to which was disputed, fired at and killed one of such persons. Held, (by COUCH, C. J. and JACKSON, PHEAR, and PONTIFIX, JJ.) that, the act being sudden and unpremeditated, the other members of the assembly were not guilty of the offence of murder under section 149 of the Penal Code, but of rioting armed with a deadly weapon under section 148. AINSLIE, J. dissented.

Kalee Beparee & others, Appellants, 1 C. L. R. 521.

Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence.

Empress v. Ram Adhin & others, 2 I. L. R. All. 139.

Rioting and causing hurt in the course of such rioting, are distinct offences, and each offence is separately punishable.

Reg. v. Mahomed Hossein & others, 1 N. W. P. Rep. All. 293.

In a trial arising out of an affray or faction fight, the members of each faction should be tried separately. The statements of the members of each faction can then, if desired, be taken on solemn affirmation, and be made evidence against their opponents; but if they decline to give evidence on the ground of implicating themselves, they cannot be compelled to do so.

Reg. v. Muzhur Hossain & others, 5 N. W. P. Rep. All. 208.

Two parties were convicted of rioting. One party consisted of not less than five persons, who were all found to have been assembled together in the fight which took place, and it was also found that they, as well as their opponents, came armed with sticks, prepared to fight, and did fight. Held, that they were not improperly convicted of rioting,

their common object being to assault their opponents. The other party only consisted of four persons. It was not found what object they had in common with the first party. The fight did not occur in a public place. Held, that they were not properly convicted of rioting. Held also, that had the fight occurred in a public place, it might have been held that the common object of both parties was to commit an affray.

Reg. v. Hurgobind & others, 3 N. W. P. Rep. All. 174.

Persons found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.

Appavu Nayak v. The Queen, 6 I. L. R. Mad. 245.

A plea of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession and opposes the entry.

Reference from Session Judge of Tinnevelly dated 26th Aug. 1869, 6 Mad. Rep. 6.

Held that the act of the defendant in assembling and forcibly interrupting a procession was forbidden by clause 4 of section 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.

Proceedings of 8th Jany. 1873. 7 Mad. Rep. Rul. 35.

In a case of a very serious riot, the rioters were acquitted by the Magistrate because he thought they might have considered their act justified, because the procession was illegal by virtue of some orders, which did not appear, which might have been efficacious in point of law. Held, that the thinking a thing legal which is not so, can be no defence to a man who violates a rule of law; that there was no evidence that the procession was illegal, and that, if it were, the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law.

Proceedings of 19th Nov. 1875. 8 Mad. Rep. Rul. 11.

The law confers (certain conditions being first compiled with) on land holders, and their authorized agents, power to distrain the moveable property of their tenants for the recovery of arrears of rents due by them. In all such cases the landholder acts upon his own responsibility, and if, in the alleged exercise of this power he attempts to seize the goods of his tenant when no rent is in arrear, mere obstruction to the seizure is not an offence.

Kalee Mundle and others, petitioners in re, 10 C. L. R. 278.

A disturbance having been created with reference to the possession of certain chur land the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespass by force. In as much, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under section 148 of

the Penal Code. Held, that, on the findings of the Judge, the conviction could not be supported in as much as on such findings the persons convicted were not members of an unlawful assembly.

Proceedings of 5th Aug. 1879. Weir, 30.

Where a quarrel arose between four persons stationed at the entrance of a temple for the purpose of collecting fees, and three other persons who wished to enter the temple without previous payment of the fee demanded: Held, that the offence committed was affray and not rioting. The offence of rioting defined.

Brae v. The Queen-Empress, 10 I. L. R. Calc. 338.

In order to convict the manager of an indigo factory under section 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed.

Chakowri Lall & Moti Kurmi & others in re, 13 C. L. R. 275.

Where a riot occurred and complaints were lodged by both parties, the witnesses for the prosecution were in each case in turn examined in chief, then also in turn cross-examined, and in like manner re-examined, and the Court thereupon discharged the accused in one case, and called upon the accused in the other to go into his defence. Held, that the procedure adopted was improper, and that there should be new trial. Empress *v.* Chandra Nath Sircar, I. L. R. 7 Calc. 65; S. C. 8 C. L. R. 352 followed.

The provisions of section 439 of the Criminal Procedure Code in no way affects the powers of the High Court as a Court of Revision, vested in it by the High Court's Act.

ROBBERY.

Reg. v. Dullellood-deen Sheikh, 5 S. W. R. Cr. R. 19.

When a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion.

Reg. v. Dwarka Aheer, 2 S. W. R. Cr. R. 49.

Theft with violence is robbery. A conviction under section 397 of the Penal Code, is equally good whether the number of thieves be five or under.

Reg. v. Hushruth Sheikh. 6 S. W. R. Cr. R. 85.

By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment.

Reg. v. Itwaree Dome & others, 6 S. W. R. Cr. R. 83.

When persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night, in three different houses, they must be tried separately on each of the three charges. Remarks on the irregularities in the investigation of the present case.

Reg. v. Ruhman Khan & others, 3 S. W. R. Cr. R. 14.

Discussion as to what constitutes robbery.

Reg. v. Sheikh Muddun Ali, 1 S. W. R. Cr. R. 27.

A person convicted of robbery or theft, cannot be also convicted of dishonestly receiving in respect of the same property.

Reg. v. Teekai Bheer, 5 S. W. R. Cr. R. 95.

Held, that the offence was robbery where, in committing theft, there was an intention, seconded by an attempt, to cause hurt.

Madhub Ghose v. Bullye Metea & others, 7 S. W. R. Cr. R. 11.

A charge of robbery under section 392 of the Penal Code, is under Act VIII of 1866, triable only by the Court of Sessions or by the Magistrate of the District, but not by a Deputy Magistrate.

Proceedings of 2nd March 1865. Weir, 166.

The use of violence will not convert the offence of theft into robbery, unless the violence be committed for one of the ends specified in section 390.

Proceedings of 18th March 1868. Weir, 171.

Provisions of sections 392, 394 and 397 distinguished.

Proceedings of 28th Oct. 1870, 5 Mad. Rep. Rul. 39.

The accused was convicted of robbery, but the Magistrate found that the property taken was not taken with any dishonest intention. Held, that the conviction was bad.

DISHONESTLY RECEIVING STOLEN PROPERTY.

Reg. v. Doyal Shilydar, 6 S. W. R. Cr. R. 87.

Evidence of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property.

Reg. Ghussoo Khan 5 S. W. R. Cr. R. 49.

To make it legal to punish at P. a prisoner committed at C. on a charge of receiving stolen property, it must be shewn that the property was stolen at P.

Reg. v. Jogeshur Bagdee & others, 7 S. W. R. Cr. R. 109.

In order to sustain a conviction under section 412 of the Penal Code, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits.

Reg. v. Shurruffoodeen, 13 S. W. R. Cr. R. 26.

Where property sufficiently identified to be the property of one person, is found to be in the possession of another person, without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found, duly to account for its possession, and unless he can do so, a jury may fairly infer in such circumstances, that it was with a guilty knowledge that the prisoner took that which he knew to be not his own.

Meer Yar Ali, petitioner, 13 S. W. R. Cr. R. 70.

In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge.

Reg. v. Samiruddin, 18 S. W. R. Cr. R. 25.

Mere possession of stolen articles of trifling value, does not warrant the presumption that the receiver knew them to have been the proceeds of a dacoity, or had acquired them from one whom he knew or believed to be a dacoit.

Reg. v. Dussorut Dass, 18 S. W. R. Cr. R. 63.

A conviction of an offence under section 411 of the Penal Code, was set aside in the absence of evidence on the record that the property was Government property, that it was stolen property, or that the accused knew or had reason to believe it was stolen.

Reg. v. Bajo Huri, 19 S. W. R. Cr. R. 37.

Where a person was charged under section 411 of the Penal Code, with having received stolen property, (rubber, the produce of the Government forests at Cachar), and it was not proved that the rubber came from the Government forests, or that it was stolen property, and that the prisoner knew that it was stolen property; it was held that the conviction under section 411

was bad, and that he could not be convicted of smuggling,—smuggling India-rubber not being an offence under the Penal Code.

Reg. v. Monmohun Roy & another, 24 S. W. R. Cr. R. 33.

Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, section 410.

Ramjoy Kurmokar, petitioner, 25 S. W. R. Cr. R. 10.

Where stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained.

Reg. v. Nyaz Ali, 25 S. W. R. Cr. R. 47.

Although a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of receiving it, knowing it to be stolen; so that, the mere fact of a person's having once been acquitted of the charge of stealing any property, does not of itself prevent his trial at any future time on the charge of receiving the same property, knowing it to be stolen.

Empress v. Sunker Gope, 6 I. L. R. Calc. 307; S. C. 7 C. L. R. 411.

A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested and sentenced to one year's rigorous imprisonment. Held, that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property. Reg. *v.* Lakhya Govind, (I. L. R. 1 Bom. 50) followed.

Empress v. Nilambar Babu, 2 I. L. R. All. 276.

Where a person was accused of dishonestly receiving stolen property knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen, held, that the Magistrate was competent, believing that the property was stolen, to make an order under section 418 of Act X of 1872 regarding its disposal.

Reg. v. Buldeo Pershad, 2 N. W. P. Rep. All. 187.

There being no evidence on the record to show that property, for the dishonestly receiving of which, a prisoner had been convicted under section 411 of the Indian Penal Code, was actually stolen, the conviction and sentence under such section was annulled.

Reg. v. Shumkur & another, 2 N. W. P. Rep. All. 312.

A prisoner cannot be convicted under section 411 of the Indian Penal Code for dishonestly receiving or retaining stolen property, in respect of property which he himself has been convicted, under section 409, Indian Penal Code of having obtained possession by committing criminal breach of trust.

Reg. v. DeSilva, 5 N. P. Rep. All. 120.

The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. Held, that that constituted the possession of the husband rather than that of the wife.

Empress v. Moorga Chetty, 5 I. L. R. Bom. 338.

The prisoner was tried at Bombay, under section 411 of the Indian Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged under sections 108 (Expl. 3) and 109 with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the 1st November 1879 certain letters addressed by the firm to their commission agent at Bombay were abstracted from the Post Office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money and used it as his own. His defence was, that the bills had been given him in payment of a debt. The prisoner was convicted on all the charges, but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved.

Held, per SARGENT and MELVILL, JJ. (WEST, J. *dissentiente*) that the bills of exchange having been stolen at Mauritius, in which island the Indian Penal Code is not in force, could not be regarded as "stolen property" within the provisions of section 410, so as to render the person receiving them at Bombay liable under section 411; that the High Court of Bombay had, therefore, no jurisdiction, and that the conviction must be quashed. Previously to the trial at the Sessions, the prisoner had applied to the Court for commission to Pondicherry and Mauritius, to take evidence on his behalf. The application was refused, on the ground that the High Court had no authority to issue a commission in such a case, but the learned Judge (WEST, J.) reserved the question for the full Court. Held, that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.

Empress v. Malhari, 6 I. L. R. Bom. 731.

In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found, concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.

Empress v. Rango Timaji, 6 I. L. R. Bom. 402.

The word "believe" in section 414 of the Indian Penal Code, is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property, with which he was dealing, was stolen property. It was not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. The facts of this case are as follows:—

On the 4th August 1880, the accused was convicted by C. Wiltshire, First Class Magistrate of Dhárwár, of the offence of having voluntarily assisted in the disposal of stolen property under section 414 of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 100 or in default, to suffer imprisonment for six months more.

On the 12th October 1878, a bullock was sold by one Rango and purchased by Basalingápa, on the guarantee of the accused that it was the property of Rango. It was in evidence that the bullock belonged to one Mahárudrapa, and that it had been stolen from him. In his examination before the Magistrate the accused stated that he knew Rango who had left his village some time ago during the famine and gone to some other place to earn his livelihood; that Rango had told him (the accused) that he (Rango) had purchased the bullock for Rs. 16. From that statement of the accused the Magistrate came to the conclusion that the accused knew, or had reason to believe, the bullock to be stolen property in as much as he knew Rango to be so poor that the latter was obliged to leave his village in order to earn the means of his livelihood in some other place. The Magistrate, accordingly, convicted the accused of the offence charged. On appeal the conviction and sentence were upheld by the Sessions Judge, (A. C. Watt) of Dhárwár on the 4th Septr. 1880. The accused thereupon made an application to the High Court for the exercise of its extraordinary jurisdiction and the proceedings were sent for.

The following is the judgment of the Court delivered by MELVILLE, J. :—It lay upon the prosecution in this case to prove that the accused person knew, or had reason to believe, that the bullock was stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. The word "believe" in section 414, Indian Penal Code, is a very much stronger word than "suspect," and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind, that the property with which he was dealing must be stolen property. The only circumstance alleged in the present case is that Rango, whose honesty the accused guaranteed, had left his village during the famine to earn livelihood elsewhere. The Court find it impossible to hold that it is a legal inference from this single circumstance that the accused had reason to believe, or, in other words, that he had sufficient reason to feel convinced,

that Rango could not, during so long an interval, have acquired sufficient means to purchase a bullock of the value of Rs. 16. On the ground, therefore, that there is no evidence on which a conviction could legally be based, the Court reverse the conviction and sentence, and order the fine, if paid, to be refunded.

Proceedings of 12th August 1868. 4 Mad. Rep. Rul. 13.

The offences specified in sections 411 and 414 of the Penal Code, cannot be considered as two distinct offences so as to allow of the procedure of section 46 of the Criminal Procedure Code, (Act XXV of 1861) being adopted.

Proceedings of 6th April, 1869. 4 Mad. Rep. Rul. 42.

The offence of dishonest retention of stolen property under section 411 of the Penal Code, may be complete without any guilty knowledge at the time of receipt.

Reg. v. Harishankar Fakirbhat & another, 2 Bom. Rep. 130.

Where persons are charged with assisting in concealing or disposing of property, which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration.

Reg. v. Bechar Mava 4 Bom. Rep. Crown Cases, 38.

Section 31 of the Criminal Procedure Code (Act XXV of 1861) does not confer jurisdiction upon a Magistrate to try the subject of a foreign state for "receiving stolen property" when the offence of receiving such property has been committed outside the British territories.

Reg. v. Dolan, 24 Law Journal, Part II. Mag. Cases, 59.

A. who had stolen some goods and had them in his pocket, was caught by the owner, who sent for a policeman. The policeman took the goods out of A.'s pocket, but afterwards, in concert with the owner, gave them back to A. who was told by the owner to go and sell them where he had sold others. A. took and sold them to B. and B. bought them, believing them to have been stolen:—Held, that B. could not be convicted, under the statute, as a felonious receiver of stolen goods. Reg. *v.* Lyons overruled.

The following case was stated by the Recorder of Birmingham. At the Sessions, held at Birmingham, on the 5th January 1855, William Rogers was indicted for stealing, and Thomas Dolan for receiving certain brass castings, the goods of John Turner. Rogers pleaded guilty, and Dolan was found guilty. It was proved that the goods were found in the pockets of the prisoner Rogers by Turner, who then sent for a policeman, who took the goods and wrapped them up in a handkerchief, Turner, the prisoner Rogers, and the policeman going towards Dolan's shop. When they came near it, the policeman gave the prisoner Rogers the goods, and the latter was then sent by Turner to sell them where he had sold others; and Rogers then went into Dolan's shop and sold them, and gave the money to John Turner as the proceeds of the sale. Upon these facts, it was contended on the part of Dolan, that Turner had resumed the possession of the

goods, and that Rogers sold them to Dolan as the agent of Turner, and that consequently, at the time they were received by Dolan, they were not stolen goods within the meaning of the statute. I told the jury, upon the authority of the case of the *Queen* v. *Lyons* (1 Car. and M. 217), cited by the Counsel for the prosecution, that the prisoner was liable to be convicted of receiving, and the jury found him guilty.

Upon this finding, I request the opinion of the Court of Appeal in Criminal Cases, on the validity of Dolan's conviction. Dolan has been sent back to prison, and I respited judgment on the conviction against him until the judgment of the Court above shall have been given.

O'Brien, for the prisoner.—The conviction is bad. When the goods reached Dolan's hands they were not stolen goods within the meaning of the statute, the possession having been restored to the lawful owner after the theft, and before they were received by Dolan. The case of the *Queen* v. *Lyons* cannot be supported. He was then stopped by the Court, who called on *Beesley*, for the prosecution. The facts of this case are stronger than those of the *Queen* v. *Lyons*. There the thing that was stolen was taken from the lad by a servant of the master in the master's presence, who consented to its being restored to the lad, and to the lad's selling it to the prisoner; and COLERIDGE, J. held the evidence sufficient to justify a conviction of the prisoner as a receiver of stolen property. Here the goods were not restored to the owner. They remained all the time in the custody of the policeman.

[LORD CAMPBELL, C. J.:—The policeman was Turner's agent. The custody of the policeman was the custody of the master.] The master had no intention of taking the goods into his own hands. He allowed them to be disposed of as stolen goods. The goods were in the custody of the law, if the master had dissented, the policeman would have been justified in refusing to give them up to him. In doing what he did, Turner was rather the agent of the policeman, than the policeman his agent. In the *King* v. *Eggington* (2 Bos. and P. 508) it was held, that the consent of a master to allow a door to be opened to let in burglars did not destroy the offence.

LORD CAMPBELL, C. J.:—In this case I feel strongly that the conviction is wrong. It cannot be supported, unless the doctrine be laid down that if a chattel, at any period in its history, has been stolen and has again been restored to its owner, a party at any time afterwards receiving it, knowing it to have been stolen, can be convicted on a charge of receiving stolen goods within the statute. The receiver in this case would not, it is clear, be liable as an accessary at common law after the felony. If the owner of the stolen goods, after having had them restored to him again, bails them to another for a particular purpose, I do not see how, with respect to the party who receives them from the bailee pursuant to that purpose, it can be considered as a case of receiving stolen goods within the Act. In this case Turner, the owner of the goods, had, I think, the possession of them just as much as if he had himself taken them into his own hands and had delivered them to Rogers for the particular purpose of selling them to Dolan. With regard to the *Queen* v. *Lyons*, I think that the facts cannot be accurately stated; but if they be, I must say that I cannot concur with that decision, and I think that it ought not to be acted upon.

COLERIDGE, J. :—Having no recollection of the case of the *Queen* v. *Lyons*, I cannot take upon myself to say that it is wrongly reported, But if it is not, I am bound to say that I made a great mistake. With regard to the present case, suppose the policeman is put out of the question, it is clear that the goods stolen by Rogers had passed back to the real owner, and were afterwards delivered by him to Rogers for a particular purpose. Now, I think that when they were in Rogers' possession the second time, they were not in his possession as stolen goods. Then, does the interference of the policeman make any difference? The policeman, in taking the goods, took them, I think, under the authority of the master. He retained them, no doubt, under the authority of the law, but Turner remained in possession; and what was done with them was done by Turner's authority.

CRESSWELL, J. :—I do not dissent from holding that the conviction was wrong; but I cannot concur with all I have heard from my Lord and my brother Coleridge. If it were necessary to hold that the policeman, by taking the stolen goods out of the pocket of Rogers, restored the possession of them to the owner, I should dissent. I think we cannot put the policeman out of the question, and treat it as a taking by the master. The goods, in the policeman's hands, were in the custody of the law, and the master could not have brought trover for them; but when they were given back to Rogers, and the master desired him to go and sell them, the master, I think, may be said to have employed Rogers for that purpose.

PLATT, J. :—I am of opinion that the conviction is wrong. The goods are found, by the owner, in the thief's pocket, and are removed by him or by the policeman. The intervention of the latter may, I think, be put out of the question. Nothing criminal can arise from the valid bargain made in respect of the goods.

WILLIAMS, J. :—I also think that the conviction cannot be sustained. In order to constitute a felonious receipt under the statute, there must, in my view of the law, be a receiving of them without the authority of the owner. It is impossible, I think, to say that the receiver, received them feloniously when he received them from a person employed by the owner to sell them. Conviction reversed.

Bishoo Manjee, Appellant, 9 S. W. R. Cr. R. 16.

Before a prisoner can be convicted under section 412, it must be proved not only that he knew the property to be plundered, but also that he actually received or retained it. There must be such a receipt or retention of the plundered property as would constitute the criminal act itself to which the guilty knowledge is to be attached.

Reg. v. Begarayi Krishna Saranu, 6 I. L. R. Mad. 373.

The fact that a child has been tried for theft and discharged under section 215 of the Code of Criminal Procedure, 1872 on the ground of want of understanding within the meaning of section 83 of the Indian Penal Code, is no bar to the conviction of a person charged under section 411 of the Indian Penal Code, with receiving the property alleged to have been stolen.

Reg. v. Siddu bin Balnath, 1 Bom. Rep. 95.

A charge under section 411 of the Penal Code, of dishonestly receiving stolen property, should state that the articles found in possession of the accused were the property of A. B. the owner thereof.

Govt. v. Mussamut Nowlia, 1 N. W. P. Rep. (Agra) 9.

Held, that the prisoner who having received stolen property concealed it in his house could not be charged and convicted of two offences, *viz.*, of having dishonestly received stolen property under section 411, Indian Penal Code and of assisting in the concealment of stolen property under section 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.

Proceedings of 4th March, 1875. Weir, 246.

A person who cannot be charged with the offence of theft on account of his offence having been committed in Foreign Territory, may be tried and convicted of retaining the stolen property if he continues to be in possession of such property within British Territories.

SENTENCE.

Reg. v. Anoo, S. W. R. 1864, Cr. R. 16.

Held by the majority of the Court that a sentence of five years' imprisonment was not excessive in the case of a man convicted of making a false statement in a judicial proceeding with the intention of defeating the ends of justice by procuring the acquittal of a guilty person.

Reg. v. Bedhoo Noshye & 4 others, 11 S. W. R. Cr. R. 37.

The power to pass judgment in the alternative given by section 381 of the Code of Criminal Procedure, (Act XXV of 1861) applies to cases in which it is doubtful under which of two sections the offence falls, and not to cases in which both charges are under the same section.

Reg. v. Bhoobun Mohun & 2 others, 11 S. W. R. Cr. R. 39.

Where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed.

Reg. v. Dhoonda Bhooya, 8 S. W. R. Cr. R. 85

The punishment for escape from lawful custody (section 224) in a case in which that is one of the offences of which the prisoner is convicted, must be "in addition" to any punishment awarded for the substantive offence.

Reg. v. Dina Sheikh & others, 3 B. L. R. A.

Held, that, where the prisoners were charged under section 148 of the Penal Code, with rioting armed with deadly weapons, and also under section 324 with voluntarily causing

Cr. R. 15; S. C. 10 S. W. R. Cr. R. 63.

hurt by dangerous weapons, they should have been sentenced only under one or other of these sections; the charges being, properly speaking, only alternative charge. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.

Reg. v. Jogeshur Roy, 5 S. W. R. Cr. R. 76.

Simple and not rigorous imprisonment can be inflicted in default of payment of a fine imposed on an offender convicted under section 179 of the Penal Code, for refusal to answer a question demanded of him by a public servant on a subject on which he was legally bound to state the truth.

Reg. v. Bulloram Doss, 4 S. W. R. Cr. R. 20.

A Sessions Judge has no authority to enhance a sentence on appeal.

Reg. v. Haroo Rujwar, 13 S. W. R. Cr. R. 27.

A sentence of fourteen years' imprisonment cannot be passed for dacoity under section 395 of the Penal Code.

Reg. v. Joyah Mohun Chunder, 14 S. W. R. Cr. R. 19.

Held on the facts of this case, that a party (A.) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A. was charged with having misappropriated, was guilty of separate offences under sections 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by section 71 of that Code.

Reg. v. Kalisankar Sandyal and others 3 B. L. R. A. Cr. 14 and 12 S. W. R. Cr. 2 Reg. v. Radha Kant Pal, 9 S. W. R. Cr. R. 12.

Where substantially but one offence has been committed, and the acts which are the basis of one charge are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed.

Where prisoners were convicted under sections 224 for escape, 225 for rescuing from lawful custody, and under section 353 for using criminal force in so doing, and sentenced to separate punishments under each section. Held, that the prisoners had only done one act, and were guilty of only one offence, and should have been found guilty under sections 224 and 225 of "escape" and "rescuing" respectively and sentenced accordingly.

Reg. v. Kashee Nath Chungo, 8 S. W. R. Cr. R. 84.

Separate sentences cannot be awarded in one case, for abducting a child in order to take property from its person (section 369), and theft after preparation to cause death &c. (section 382), where the evidence shows that the act is one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death &c. within the meaning of that section.

Reg. v. Kassim Ally, 11 S. W. R. Cr. R. 10.

A sentence of transportation for two periods, each of seven years, one sentence to commence after the expiration of the other, is not warranted by section 46 of the Code of Criminal Procedure; (Act XXV of 1861) that section allowing such sentences only when the penalties consist of imprisonment.

Reg. v. Komaruddy Bhooya, 1 S. W. R. Cr. R. 47.

A sentence of rigorous imprisonment passed in a case of affray with homicide, under Regulation VI of 1828 quashed as illegal, and altered to one of imprisonment with labour.

Reg. v. Mahendra Nath Chatterjee, 5 B. L. R. Ap. 39.

A. was charged with the offence of voluntarily causing hurt to C., and B. was charged with the same offence, and also with the offence of abetting A. The Magistrate found A. guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found B. guilty of abetment of the offence of voluntarily causing hurt to C. and sentenced him to one month's rigorous imprisonment and a fine.

On appeal, the Sessions Judge held that there was no evidence to convict A., and he accordingly released the prisoner. The appeal of B., however, was rejected, on the ground that the evidence though it did not prove him guilty of abetment, proved him guilty of voluntarily causing hurt, and therefore, under section 426 of the Code of Criminal Procedure, (Act XXV of 1861) the sentence could not be reversed. No "error or defect either in the charge or in the proceedings on trial" was alleged. Held, (by MITTER, J. that section 426 of the Code of Criminal Procedure, did not apply.

Reg. v. Mahomed Akhir, 12 S. W. R. Cr. R. 17.

Where a zemindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Session Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under section 62 of the Penal Code, the High Court set aside the sentence under section 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances.

Reg. v. Peetum Lall Puddhun, 7 S. W. R. Cr. R. 111.

Remarks on the comparatively light sentence passed without any reason in a case where a false charge of murder was preferred and persisted in.

Reg. v. Puban, 7 S. W. R. Cr. R. 1.

After a sentence has once been passed by a competent authority, the High Court has no more power to interfere with it than a private individual, except upon appeal, or on a reference, or by way of revision as provided by the Code of Criminal Procedure, (Act XXV of 1861).

Sentences of imprisonment may be accumulated beyond the period of 14 years, notwithstanding section 46 of that Code, which limit has reference only to sentences passed simultaneously, or passed upon charges tried simultaneously.

Reg. v. Ramnath & others, 7 S. W. R. Cr. R. 45.

A sentence of imprisonment by the Magistrate was quashed as against those prisoners who were not present and had not been heard in their defence. In deciding a dispute as to the right of water, the Magistrate must follow strictly the course pointed out by chapter XXII of the Code of Criminal Procedure, (Act XXV of 1861).

Reg. v. Sahrae & others, 8 S. W. R. Cr. R. 31.

Separate convictions and sentences under sections 429 and 379 and under sections 457 and 380 of the Penal Code were set aside; and the convictions under section 429 in the former case, and under section 457 in the latter, allowed to stand.

Reg. v. Sheikh Mooneah, 11 S. W. R. Cr. R. 38.

Where the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft.

Reg. v. Seebchurn Haree & others, 11 S. W. R. Cr. R. 12.

Where, in a case in which a prisoner was convicted of theft, and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.

Reg. v. Shunker Singh & others, 1 S. W. R. Cr. R. 34.

In an affray respecting land, one party were the aggressors, and the other side, had the affair not ended fatally, would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of section 104 of the Penal Code. Held, that one year's rigorous imprisonment was sufficient punishment for the latter.

Reg. v. Sibnarain Palodhee & another, 7 S. W. R. Cr. R. 33.

Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder, when they believe the evidence.

Reg. v. Srimonto Kotal & another, 7 S. W. R. Cr. R. 31.

Additional punishment in default of payment of fine must be rigorous.

Reg. v. Tepoo, 3 S. W. R. Cr. R. 15.

A woman quick with child, is exempt from capital punishment.

Muneeram Chung, Appellant, 1 S. W. R. Cr. R. 19.

If a Sessions Judge thinks that a jury is wrong in convicting a prisoner of culpable homicide, and not of murder, though he cannot interfere with the finding, he may sentence the prisoner to transportation for life instead of to 10 years' imprisonment. The High Court cannot enhance a legal sentence.

Krishnanand Bhuttacharjee, 3 B. L. R. A. Cr. R. 50; S. C. 12 S. W. R. Cr. R. 47.

A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by sections 46, 47 and 48 of the Criminal Procedure Code, (Act XXV of 1861), a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor, except as provided for by section 421 of the Code of Criminal Procedure, can a sentence, which is to take place immediately be suspended.

Nyan Suk Mehter, 3 B. L. R. A. Cr. R. 49.

Solitary confinement must not be imposed for the whole term of a person's imprisonment under section 74 of the Penal Code, it is to be imposed at intervals.

Bissumbhur Shaha, petitioner, 6 S. W. R. Cr. R. 7; B. L. R. Sup. Vol. 484, F. B.

The High Court has power to mitigate, on the ground of its being excessive, a sentence passed by a Magistrate, and confirmed in appeal by the Sessions Judge, or a sentence passed in appeal by the Sessions Judge altering a sentence passed by a Magistrate.

Bama Boistobee, petitioner, 6 S. W. R. Cr. R. 17.

A sentence of imprisonment passed on a woman who was never put on her defence, quashed as illegal.

Reg. v. Keifa Sing, 3 S. W. R. Cr. R. 16.

Punishment for the offence of waging war with an Asiatic Power in alliance with the Queen.

Phoolman Tewary v. Satram Ojha & others, 6 S. W. R. Cr. R. 51.

A Subordinate Magistrate of the 1st class has no power under section 45 of the Code of Criminal Procedure, (Act XXV of 1861) to award any greater sentence of imprisonment in default of payment of fine, than 6 weeks in the case of persons convicted of being members of an unlawful assembly.

Jhoomuck Chamar, 6 S. W. R. Cr. R. 90.

A sentence of four years' imprisonment by a Magistrate is illegal as beyond his competency.

Boodhooa, prisoner, in the case of, 9 S. W. R. Cr. R. 6 S. C. B. L. R. Sup. Vol. 869 F. B.

Held, (JACKSON, J. dissenting) that an officer exercising the powers described in section 1, Act XV of 1862, is competent, under the provisions of section 59 of the Penal Code, to pass a sentence of transportation for seven years instead of awarding sentence of imprisonment. (See now sections 30, 34 and 380, para 1, Act X of 1882.)

Goolzar Khan, petitioner case of, 9 S. W. R. Cr. R. 30.

An accused who threatened three witnesses, was convicted and sentenced to four months' imprisonment for the threat to each witness, in all to one year. It was held that if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted of an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust.

Oneeram v. Lamesoor, 9 S. W. R. Cr. R. 70.

The fact that there is a special law to meet a particular offence (in this case, cattle trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code, was established.

Bhugwan & others v. Doyal Gope, 10 S. W. R. Cr. R. 7.

The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witnesses to call, although he was tried at the same time with others who had been so asked.

Buhram Khan, Case of, 10 S. W. R. Cr. R. 47.

In a case of interruption to a public servant in a stage of a judicial proceeding under section 228, Penal Code, a sentence of imprisonment cannot be passed under section 163 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Chunder Kant Lahoree & others, 12 S. W. R. Cr. R. 2.

Where substantially only one offence has been committed, the several acts which, taken together constitute that offence, cannot legally be treated as separate offences—and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.

Mohabeer Singh, petitioner, 15 S. W. R. Cr. R. 48.

In a case in which the accused was charged under sections of the Penal Code of an offence which was committed before the Penal Code came into operation, it was held that, having regard to section 4, Act XVII of 1862), and section 426 of the Code of Criminal Procedure, (Act XXV of 1861) the error of procedure was not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was the legal penalty for the offence before the Penal Code became law.

Rughoonath Dass v. Chuckerdhun Raut & others, 15 S. W. R. Cr. R. 49.

Where a Magistrate convicted under certain repealed sections of a law, the High Court refused to set aside the conviction having regard to section 426, Code of Criminal Procedure (Act XXV of 1861), as the conviction and sentence might have been passed under sections of the Penal Code, and no substantial injury had been done to the accused.

Watson & Co. v. Bykuntnath Dass, 15 S. W. R. Cr. R. 83.

In a case in which a legal sentence, however light it may be, has been passed, the High Court, sitting as a Court of revision under section 404 of the Code of Criminal Procedure (Act XXV of 1861), have not the power to interfere with that sentence, in as much as under section 405 the Court cannot say that the sentence is contrary to law.

Moheshnath v. Hurro Mohun Ghosal, 16 S. W. R. Cr. R. 12.

Where a prisoner was properly convicted on the evidence, of illegally seizing cattle, but was sentenced under the old law (Act III of 1857) when that Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done.

Reg. v. Zohur Sheikh & others, 18 S. W. R. Cr. R. 41.

A sentence of rigorous imprisonment in default of fine, passed under Act II of 1867 (B. C.) was set aside, the notification of the Government extending the Act to Jungipore not having been published in three successive numbers of the *Government Gazette*.

Reg. v. Nga Shoayde, 19 S. W. R. Cr. R. 68.

The fact that except death, no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the Court in condemning the convict to death.

Reg v. Hurnath Sing, 20 S. W R. Cr. R 22.

In a case in which the Magistrate referred the proceedings to the High Court with a recommendation that they should be set aside because the sentence was inadequate, it was held that it is not merely because circumstances occur to the Magistrate which would render necessary a more severe sentence, or a different charge, that the High Court should interfere. There must be matter on the record of the case, showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence.

Reg v. Poran Mal, 23 S. W. R. Cr. R. 49.

Under Act VI of 1864, section 17, a sentence of whipping cannot be superadded to one of imprisonment, where the imprisonment is for more than five years. A Sessions Judge has no power, under section 464, Code of Criminal Procedure (Act X of 1872), to alter or set aside a conviction and sentence once made and signed by him.

Reg. v. Hekmut Ali & Arfan Ali, 24 S. W. R. Cr. R. 72.

Where a District Magistrate in appeal made an order under the Code of Criminal Procedure (Act X of 1872), section 280, enhancing the sentence appealed from, without having served notice on the appellant, the order of enhancement was quashed as illegal.

Reg. v. Goojree Panday & another, 11 B. L. R. App. 3 S. C. 20 S. W. R. Cr. R. 21.

The prisoners in this case, named Goojree Panday and Jadu Sein, were convicted by the Court of Session at Midnapore, of dacoity, and were sentenced, Goojree Panday to rigorous imprisonment for three years, and Jadu Sein to similar imprisonment for six months. Upon hearing the Appeal, application was made to exercise the powers vested in the Court of Appeal by section 280 of the Code of Criminal Procedure, (Act X of 1872) by enhancing the punishment which had been awarded against the prisoners.

JACKSON, J. :—.....This Court is empowered, both as a Court of Appeal and also as a Court of Revision, to enquire into the sufficiency of sentences passed by the inferior Courts. One contingency in which that power may be exercised is when the Judge, recognizing the heinous nature of the offence committed, yet considers that there are circumstances which go to mitigate punishment, or make the prisoner an object of leniency. In such a case no doubt the High Court may enquire into those circumstances, and although it is generally reluctant to do so, may take a different view of the discretion which ought to have been exercised, and may enhance the punishment. But there is another view of the case in which the duty of the High Court will arise, and that is, where no circumstances of mitigation have been set forth, and where, without any sufficient reason, the Court convicting the prisoner has awarded a punishment, which is in ordinary cases quite inadequate in respect of the offence committed. It is the duty of the High Court in such a case—a duty which the Legislature has in sections 280 and 297 specially imposed upon us to take care that the inferior criminal Courts do not, by the infliction of lenient punishments, give, as it were, encouragement to the commission of serious offences. ....I think this is a case in which the sentence of three years' rigorous imprisonment passed by the Sessions Judge on the principal accused is wholly inadequate; and that, under the circumstances of the case, a punishment less than seven years ought not to have been passed on him. The sentence is enhanced accordingly.

Reg. v. Soffiruddi Palwar & another, 13 B. L. R. App. 23; S. C. 22, S. W. R. Cr. R. 5.

In this case Noimuddi, Soffiruddi, and Basiruddi, were committed to take their trial for the murder of one Shomasdi. The Sessions Judge, in concurrence with the opinion of the Assessors, convicted the prisoner Noimuddi under section 325 of the Penal Code, and sentenced him to be rigorously imprisoned for seven years and to pay a fine of Rs. 100; convicted the prisoner Soffiruddi under section 201 and sentenced him a five years' rigorous imprisonment; and acquitted Basiruddi, on account of his youth, and because he believed he acted under the coercion of his father, the prisoner Soffiruddi.

Noimuddi and Saffiruddi appealed from prison, and their appeal came on for hearing, but no one appeared on their behalf.

Held, upon the facts, that this was a case in which the High Court ought to exercise the powers conferred upon it by section 280 of the Code of Criminal Procedure (Act X of 1872) and to alter the finding of the Court below, and also to enhance the punishment awarded by it. The prisoner Noimuddi was convicted of murder under section 302 and sentenced to transportation for life. The prisoner Soffiruddi was convicted under section 201 and sentenced to seven years' rigorous imprisonment.

Empress v. Jubdur Kaji & another, 6 I. L. R. Calc. 718. S. C. 8 C. L. R. 390.

Under section 454 of the Criminal Procedure Code, (Act X of 1872) the collective punishment awarded under sections 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the graver offence.

Quære:—Whether separate convictions under sections 147 and 324 of the Penal Code are legal?

Empress v. Shumsher Khan, 6 I. L. R. Calc. 624.

Section 36 of the Criminal Procedure Code, as regards the necessity for confirmation of the sentence by the Sessions Judge, refers to cases in which the sentence of imprisonment is a sentence of upwards of three years, without including any additional sentence as to fine or whipping.

Boodhoo Jolaha, Appellant, 2 C. L. R. 215.

Where the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one of transportation for life.

Sher Mahomed & another, 2 C. L. R. 511.

Where a Magistrate of the first class passes a sentence of imprisonment and fine, his order is appealable. He cannot therefore, in such a case, make up his record in the manner described by section 227 of the Code of Criminal Procedure (Act X of 1872).

It is competent to a Court of Session to order a re-trial of a case which is before it on appeal.

Okhoy Kumar in re, 7 C. L. R. 393.

Where a Magistrate, after sentencing two prisoners to separate terms of imprisonment, admitted them to bail, in order that they might have the means of appealing, held that such admission to bail did not make the previous sentence one to commence at a future time, and consequently illegal. The case of Kishen Chunder Bhuttacharjee, 12 W. R. Cr. R. 47 distinguished.

Empress v. Darba & others, 1 I L. R. All. 461.

Section 309 of the Criminal Procedure Code, (Act X of 1872) does not extend the period of imprisonment which may be awarded by a Magistrate under section 65 of the Indian Penal Code, it only regulates the proceedings of Magistrates whose powers are limited.

Empress v. Megha, 1 I. L. R. All. 637.

Held, that, where a person commits an offence punishable under chapter XII or chapter XVII of the Indian Penal Code, punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject on being convicted of the second offence to the enhanced punishment provided in section 75 of the Indian Penal Code.

Daulatia & another, in re, 3 I. L. R. All. 305.

Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict.

A person accused of theft on the 1st August and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class, at the same time, for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. Held, that the joinder of the charges was regular under section 453 of Act X of 1872, and the punishment was within the limits prescribed by section 314. Empress *v.* Umeda (not reported, decided the 18th July 1879) observed on by STRAIGHT, J.

Reg. v. Bul Singh & others, 4 N. W. P. Rep. All. 8.

A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction.

Reg. v. Muhammad Sail & another, 1 I. L. R. Mad. 277.

Prisoners were convicted of having committed an offence punishable under section 130 of the Indian Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under the section. Held by a majority of the High Court (KINDERSLEY, J. dissenting) that having regard to the provisions of section 309 of the Criminal Procedure Code, Act X of 1872 the sentence was legal.

Proceedings of 19th April 1876. 1 I. L. R. Mad. 56.

A sentence of whipping passed on a person who is already under sentence of death, or transportation, or penal servitude, or imprisonment for more than five years, is illegal. If the sentence of whipping precede instead of follow, the other sentence, the passing of the latter sentence renders the infliction of the whipping illegal.

Jotharam Davay & another, in re, 2 I. L. R. Mad. 30.

The words "to imprisonment for a term exceeding 6 months or to fine exceeding 200 rupees" in section 167 of the Presidency Magistrates Act (IV of 1877) are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment

in default of payment of fine, the operation of which is contingent only on the fine not being paid.

Reg. v. Bhista Bin Madanna, 1 I. L. R. Bom. 308.

Under Act XXXI of 1860, section 32, clause 6, a sentence of fine only or of imprisonment only, is a legal sentence.

A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, and this is more especially so, when the penal enactment is of an exceptional character.

Reg. v. Rama Bhivgowda, 1 I. L. R. Bom. 223.

The aggregate of the sentences passed under section 314 of the Code of Criminal Procedure (Act X of 1872) in a case of simultaneous convictions for several offences, must be considered a single sentence for the purposes of confirmation or appeal.

Reg. v. Tukaya Bin Tamana, 1 I. L. R. Bom. 214.

In a case of conviction of house-breaking by night, in order to commit theft under section 457 and theft, under section 380 of the Indian Penal Code, there may either be one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.

Imperatrix v. Rama Prema, 4 I. L. R. Bom 239.

The word "modify" in section 18, clause 2 of the Code of Criminal Procedure (Act X of 1872) does not include the power to enhance a sentence: consequently, when an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it.

Empress v. Mahadu, 6 I. L. R. Bom. 690.

The accused having been previously convicted of offences punishable under chapter XII or chapter XVII of the Indian Penal Code, with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of these chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. Held, that a sentence of imprisonment for seven years was illegal. Under section 75 of the Indian Penal Code the accused might be transported for life, but he could not be imprisoned for a longer period than six years.

Proceedings of 17th Jan. 1868, 4 Mad. Rul. 1.

A Session Judge has no authority to suspend his own sentence.

Proceedings of 13th Nov. 1868, 4 Mad. Rep. Rul. 19.

A sentence duly passed and recorded cannot be reversed by the Judge.

Proceedings of 15th Jan. 1869, 4 Mad. Rep. Rul. 27.

Where prisoners are convicted of separate offences, a separate sentence should be passed on each case, with a direction that the imprisonment in the second case, should commence on the expiration of that in the first and so on.

Proceedings of 30th April 1869, 4 Mad. Rep. Rul. 36.

The High Court has power to mitigate a sentence passed by a Magistrate and confirmed on appeal by the Court of Session under sections 405 and 428 of the Criminal Procedure Code. (Narapureddy Ramareddy and Vakala Adanna, prisoners, 4 Mad. Rep. 242 overruled).

Proceedings of 2nd Nov. 1869, 5 Mad. Rep. Rul. 3.

Where a first class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment, under section 457 of the Penal Code, and finding that the prisoner was liable to enhanced punishment under section 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment, under section 46 of the Code of Criminal Procedure (Act XXV of 1861), the latter sentence was set aside by the High Court.

5 Mad. Rep. Rul. 12.

Sessions Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of Magistrates.

Proceedings of 18th Feb. 1870, 5 Mad Rep. Rul. 18.

When a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment, and in the other case to whipping, under Act VI of 1864.

Proceedings of 29th March 1870, 5 Mad. Rep. Rul. 20.

A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the Appellate authority.

Proceedings of 20th July 1870. 5 Mad. Rep. Rul. 28.

An order to repay a fee under section 31 of Act VII of 1870 is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court and may be retained in deposit pending an appeal where an appeal lies.

Proceedings of 31st August 1870. 5 Mad. Rep. Rul. 35.

A sentence of rigorous imprisonment upon conviction for an offence under section 48, Act XXIV of 1859 (Police Act) is illegal.

Proceedings of 7th Nov. 1870. 5 Mad. Rep. Rul. 42.

Three persons were charged with five distinct offences of house-breaking by night, and were sentenced to two years, rigorous imprisonment in each case. Held, that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentences as they stand all the punishments inflicted would be going on simultaneously.

Proceedings of 16th Nov. 1870. 6 Mad. Rep. Rul. 3.

The prisoner was convicted under section 475 of the Penal Code, and, having been previously convicted of an offence punishable under chapter XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. Held, that the Magistrate had power to pass sentence of two years' imprisonment only.

Proceedings of 20th Dec. 1871. 6 Mad. Rep. Rul. 47.

To enter up findings on every head of charge is not only not illegal but the most convenient course. Where the acts constituting the offence are founded on one single continuous transaction, sentence should only be passed for the principal offence.

Proceedings of 3rd April 1873. 7 Mad. Rep. Rul. 21.

The order of the High Court, of 30th August 1871, respecting the period of issuing orders confirming sentence of death, after receipt of the record, is no longer in force.

Reg. v. Tukia, Valad. Ganji, 1 Bom. Rep. 3.

A Magistrate has no authority to vary any sentence he may have once passed on a prisoner.

Reg. v. Hari bin Vithoji, Bom. Rep. 139.

A Sessions Judge cannot, on appeal, from a Magistrate's decision inflict a term of imprisonment in commutation of a fine, longer than that which the Magistrate himself could have inflicted.

Reg. v. Ganu, Ladu 2 Bom. Rep. 126.

Where a person, though charged under different sections of the Penal Code, was convicted of what was substantially but a single offence: Held, that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment, as for separate offences under section 46 of the Code of Criminal Procedure (Act XXV of 1861), exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence. Held, also, that, as the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished, as after a previous conviction, under section 75 of the Penal Code.

Reg. v. Vinayak Trimbak et al., 2 Bom. Rep. 391.

The prisoners, having been convicted by an Assistant Session Judge of forgery and other offences, were sentenced each to an aggregate amount of punishment which the Court was competent to inflict, but without specifying the several penalties awarded for each offence. On a reference by the Session Judge under section 434 of the Criminal Procedure Code (Act XXV of 1861): Held, that it was an irregularity, on the part of the Assistant Session Judge, not to pass a separate sentence under each independent head of the charge; but that it was not an error or defect in consequence of which the High Court could reverse or alter the sentence, under section 426 of the Code.

Reg. v. Ratanrav bin Mahadevrav Chavan, 3 Bom. Rep. Crown Cases, 32.

A sentence of *rigorous* imprisonment passed by a Magistrate F. P. under section 188 of the Indian Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of *simple* imprisonment, as the Magistrate's finding did not show that the case came within the latter part of the section, in which case alone, the infliction of rigorous imprisonment was authorized.

Reg. v. Raghoji bin Kanoji, 3 Bom. Rep. Crown Cases, 42.

On a reference by a Session Judge, in reviewing the monthly magisterial returns, where the conviction by the Magistrate was for cheating by personation, and the offence appeared to the High Court to be furnishing false information, for which the punishment awarded was legal: Held, that the Court, under section 426 of the Criminal Procedure Code (Act XXV of 1861) ought not to interfere with the conviction or sentence.

Reg. v. Zora Karubeg, 4 Bom. Rep. Crown Cases, 12.

Where a person, though charged under two heads, was found guilty of what was substantially but one offence:—Held, that it was improper for the Session Judge to record a conviction under two sections of the Indian Penal Code; and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed.

Reg. v. Murar Trikam, 5 Bom. Rep. Crown Cases, 3.

Held that a Session Judge has no power to quash a sentence passed by an Assistant Session Judge and by him submitted for confirmation, and direct new sentences to be passed, even supposing the sentence of the Assistant Session Judge to be illegal. Held, also, when more than one offence is proved, it is not proper to convict only of one and to acquit of the other, although the offences may be cognate. Reg. *v.* Vinayak Trimbak (2 Bom. Rep. 391) followed.

Reg. v. Muliya Nana et al., 5 Bom. Rep. Cases, 24.

Held that a Session Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him.

Reg. v. Sakya Valad Kavji et al., 5 Bom. Rep. Crown Cases, 36.

Sentence of transportation for fourteen years under section 392 of the Indian Penal Code annulled, as the offence for which such sentence was passed was not committed *subsequently* to any conviction; and section 75 had therefore been improperly applied.

Semble, that a Session Judge cannot (under section 75 of the Indian Penal Code or otherwise) by amalgamating a sentence which he is competent to pass upon a prisoner, with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted.

Reg. v. Bechar Khushal, 5 Bom. Rep. Crown Cases, 43.

Imprisonment in default of payment of a fine inflicted under Act (Bombay) VII of 1867, section 31, ought to be simple, not rigorous.

Reg. v. Chenappa valadNagappa, 5Bom. Rep. Crown Cases, 44.

Where a Magistrate sentenced a person, who had neglected to take out a license, under Act XXI of 1867, section 15, and Act XXIX of 1867, section 3, to pay a fine of ten rupees, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had, under the Act, no power to make such an order.

Reg. v. Santu bin Lakhappa Kore, 5 Bom. Rep. Crown Cases, 45.

The sentence of imprisonment passed in default of the payment of a fine inflicted under section 290 of the Indian Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment.

Reg. v. Vithoba bin Soma, 5 Bom. Rep. Crown Cases, 61.

Section 45 of the Criminal Procedure Code (Act XXV of 1861) makes applicable the provisions of section 65 of the Indian Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under section 21 of the Criminal Procedure Code. Imprisonment for one month awarded in default of payment of a fine under section 3 of the Salt Revenue Act (XXXI of 1850) was accordingly reduced to three weeks' simple imprisonment.

Reg. v. Genu bin Aku, 5 Bom. Rep. Crown Cases, 83.

Where a prisoner convicted of "housebreaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under section 457 of the Indian Penal Code, and on the second head of charge to receive twenty stripes, under section 2 of the Whipping Act (VI of 1864); the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act.

Jagannath Bhat bin Appabhat, 5Bom. Rep. Crown Cases, 103.

Where accused was convicted, under Act XXVI of 1850, of disobedience of an order made by the Municipal Commissioners of Puna, and was sentenced to pay a fine of twenty rupees, and (eight days' time being allowed him within which to comply with the order) a further fine of two rupees for each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court, as being illegal.

Reg. v. Ragha Naranji et al., 7 Bom. Rep. Crown Cases, 31.

When the proceedings in a case tried by a Subordinate Magistrate are submitted, under section 277 of the Code of Criminal Procedure (Act XXV of 1861) to a District Magistrate to pass sentence upon the accused, the accused is entitled to be present at the passing of such sentence before the District Magistrate.

Reg. v. Hanmapa bin Mahapa, 7 Bom. Rep. Crown Cases, 37.

Where a Magistrate annulled a conviction passed by a Subordinate Magistrate, 1st Class, of voluntarily causing hurt by means of an instrument for stabbing, cutting, &c., under section 324 of the Indian Penal Code (an offence cognizable by the Subordinate Magistrate), and directed the Subordinate Magistrate to commit the accused to the Court of Session for trial on the charge of voluntarily causing grievous hurt by means, &c., (a charge cognizable by the Court of Session). The High Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate.

Reg. v. Sadu, 7 Bom. Rep. Crown Cases, 87.

In cases of convictions under sections 11 and 12 of the Military Cantonment Act (Bombay Act, III of 1867) a simultaneous sentence of fine and imprisonment in default of the payment of the fine is illegal. Imprisonment in default of payment of fine can only be awarded, under section 14 of the Act, in the event of no property sufficient for the payment of the fine being found.

Reports of Police or Medical officers are not a sufficient sanction for prosecution under this Act. A complaint on oath or solemn affirmation is necessary.

Reg. v. Anvar Khan valad Gulkhan & another, 9 Bom. Rep. 172.

It is competent to a Magistrate to pass a separate sentence in respect of each of the two charges, of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges, does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences.

Reg. v. Dod Basaya & another, 11 Bom. Rep. 13.

Where the act of an accused person, coupled with his intention or knowledge, constitutes a graver offence, the circumstance that the same act also answers to the definition of another less grave offence does not render him liable to a cumulative punishment. Cases where different statutes provide separate punishments for the same Act, distinguished.

Bichuk Aheer v. Auhuck Bhoonea & others, 6 S. W. R. Cr. R. 5.

A double sentence for theft and mischief is illegal and improper.

Reg. v. Hossein Ally, 7 S. W. R. Cr. R. 47.

Where a prisoner convicted of murder against the opinion of the assessors, was sentenced to transportation for life, the High Court reduced the sentence to 10 years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country.

Reg. v. Kallachand Boido & others, 8 S. W. R. Cr. R. 18.

A sentence of three years' imprisonment is not too severe a punishment for a deliberate attempt to pervert justice by fabricating in one office false statements to be designedly and corruptly used in another.

Reg. v. Banda Ali, 6 B. L. R. Ap. 95. S. C. 15 S. W. R. Cr. R. 7.

Upon conviction of the offence of house-breaking, the accused was sentenced by the Deputy Magistrate to six months' rigorous imprisonment, and to be whipped. On appeal, the Judge found that as this was the first offence, the additional punishment of whipping was illegal; and setting aside so much of the sentence, passed a sentence of three months' rigorous imprisonment, in addition to the six months' rigorous imprisonment passed by the Deputy Magistrate: Held, that the commutation of the punishment was illegal.

Reg. v. Mohanundo Bhundary, 5 S. W. R. Cr. R. 16.

A sentence of transportation under sections 412 and 59 of the Penal Code cannot exceed ten years.

Reg. v. Mohesh Chunder Sircar, 3 S. W. R. Cr. R. 13.

Contemporaneous sentences are not justified by the Penal Code.

Reg. v. Mooktee Kora, 2 S. W. R. Cr. R. 1.

To bring section 59 of the Penal Code into operation, the punishment awarded on one offence alone must be 7 years' imprisonment and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under sections 392 and 394.

Reg. v. Nathoo Doss, 3 S. W. R. Cr. R. 12.

Discussion as to the punishment sufficient for women charged with bringing a false charge of dacoity.

Reg. v. Tonooram Malee, 3 S. W. R. Cr. R. 44.

Transportation can only be substituted for imprisonment when the offender has been sentenced to at least seven years' imprisonment in one case.

Dhunraj Singh v. Petumber Doss, 5 S. W. R. Cr. R. 5.

A sentence of fine only cannot be passed under section 348 of the Penal Code, for wrongful confinement to extort confession; part of the sentence must be imprisonment.

Gobindchunder Roy & others, petitioners, 16 S. W. R. Cr. R. 60.

A cumulative sentence under section 143 of the Penal Code (being a member of an unlawful assembly) and under section 353 (using criminal force against a public servant) was upheld by the High Court in this case.

Reg. v. Rughoonath Dass, 23 S. W. R. Cr. R. 59.

It is a general principle that judgment must be delivered by the Judge who has heard the evidence.

Reg. v. Naiada, 1 I. L. R. All. 43.

Where an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.

Empress v. Chattar Sing & others, 2 I. L. R. All. 33.

L. C. K. and D. conspired to kill S. In pursuance of such conspiracy L. first and then C. struck S. on the head with a *lathi*, and S. fell to the ground. While S. was lying on the ground, K. and D. struck him on the head with their *lathis*. Held, (STUART, C. J. dissenting) that, in as much as K. and D. did not commence the attack on S. and it was doubtful whether S. was not dead when they struck him, transportation for life was an adequate punishment for their offence.

Observations by STUART, C. J. on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the correctness of the conclusion he has arrived at on the evidence in such case.

Reg. v. Toral Gujar & another, 3 N. W. P. Rep. All. 126.

Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour under section 296 of the Criminal Procedure Code, (Act XXV of 1861) for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner.

Proceedings of 22nd February 1876. 1 I. L. R. Mad. 54.

Section 280 of the Code of Criminal Procedure (Act X of 1872) authorizes an Appellate Court, subject to the proviso in the final sentence, to enhance any punishment that has been awarded. As an Appellate Court, 1st Class Magistrate has power to pass any sentence which Subordinate Magistrate might have passed.

Reg. v. Amirtam, 4 I. L. R. Mad. 335.

A sentence of imprisonment in default of payment of a fine imposed under the provisions of Act XVII of 1840 is illegal.

Kunhussa v. The Queen, 5 I. L. R. Mad. 28.

Section 59 of the Indian Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine.

Reg. v. Yellamander, 5 I. L. R. Mad. 157.

A sentence of rigorous imprisonment in default of payment of fine for the offence of nuisance under section 290 of the Indian Penal Code is legal.

Reg. v. Nabi Saheb, 6 I. L. R. Mad. 247.

A Mussulman is not of the lower castes of the people punishable, under section 10 of Madras, Regulation XI of 1816, by confinement in the village stocks.

Proceedings of 12th Nov. 1870. 5 Mad. Rep. Rul. 44.

When a fine is imposed in addition to transportation and the whole or part of the fine is levied, it is the duty of the Session Judge to inform the authorities at Port Blair of the fact.

Govt. v. Holasee Singh & another, 1 N. W. P. Rep. (Agra) 17.

Where a Magistrate conducted and closed a trial in the established Court House, but could not by reason of illness pronounce judgment, which he did at his private house, —Held, that the procedure being exceptional and in no way prejudicial to the prisoner, could not be quashed as illegal under section 297, Criminal Procedure Code (Act XXV of 1861); and that the Judge was not competent to quash the sentence on this ground, and to order a new trial by the Magistrate, his power being limited to refer the cases for consideration to this Court under section 434.

Toyab Shaikh in re, 1 Ind. Jur. N. S. 58.

Where a Sessions Judge and assessor acquit in a case of murder, but find the prisoner guilty of a minor charge, the Appellate Court has no power to interfere to enhance the punishment awarded.

Reg. v. Chunder Coomar Sein, 1 Ind. Jur. N. S. 97.

Where a person in the employment of the Court, is convicted of a criminal offence punishable by fine or imprisonment, it is quite competent to the Magistrate in his administrative capacity to dismiss him from his office.

Reg. v. Mussamut Ghurbhurnee, S. W. R. 1864, Cr. R. 1.

Where a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery.

Reg. v. Dabee & others, S. W. R. 1864, Cr. R. 27.

Section 380 of the Code of Criminal Procedure (Act XXV of 1861) does not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, but only requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in such cases, the Judge may record those circumstances and submit them for the consideration of the Government, and the Government may, under section 54 act as to it seems proper.

Reg. v. Rughoo & others, S. W. R. 1864, Cr. R. 30.

Where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to 10 years, a sentence of 14 years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under section 59 change it to transportation for that period.

Reg. v. Premchund Ousowal & others, S W. R 1864, Cr. R. 35.

Under section 59 of the Penal Code, a Court can sentence to transportation only in a case in which the offence is punishable with imprisonment for 7 years or upwards. It may, in passing sentence for the offence, commute the imprisonment to transportation; but it cannot commute the sentence after the sentence of imprisonment has been passed.

Proceedings of 4th June, 1879. Weir, 327.

The High Court is the only tribunal in which the law vests the power of postponing the execution of a sentence of death (passed and) confirmed on a woman found to be pregnant.

Proceedings of 5th June, 1879. Weir, 349.

Section 314 (Act X of 1872) does not embrace the case of separate trials held on the same or subsequent days for separate offences committed by the same person, but has reference only to the conviction of the accused person of two or more offences at one trial.

Proceedings of 7th Decr. 1880. Weir, 350.

The ruling in High Court Proceedings, 5th June, 1879 followed and affirmed.

Proceedings of 23rd Decr. 1873. Weir, 351.

The direction that a sentence in one case is to run from the date of the expiration of the sentence in a previous case should appear in the body of the sentence and should also be inserted in the warrant.

Proceedings of 26th July, 1880. Weir, 352.

Where a prisoner was sentenced to terms of imprisonment in two separate trials, it was held that the prisoner was with reference to the sentence in the first case a person already under sentence of imprisonment within the meaning of section 317, Criminal Procedure Code, and that a direction that the imprisonment in the second case should be concurrent with the imprisonment in the first case, was therefore illegal. If the convict had been tried at one trial for the offences, such a direction would not be illegal.

Proceedings of 13th February, 1867. Weir, 14.

When a sentence does not exceed or is not less than one year's rigorous imprisonment, the period of solitary confinement must not exceed two months.

Proceedings of 15th Decr., 1879. Weir, 15.

A sentence adjudging that a period of three months out of a term of imprisonment for one year and one day be passed in solitary confinement is illegal, being in conflict with the provision in section 74 limiting the solitary confinement, when the substantive sentence exceeds three months, to seven days in any month.

Gottimocula Buchi Venkiah, accused. Weir, 126.

Section 309 of the Penal Code (attempt to commit suicide) requires the Court to pass a substantive sentence of imprisonment. A sentence of fine and of imprisonment in default of payment is therefore an illegal sentence.

Proceedings of 15th April, 1868. Weir, 309.

The natural effect of suspending a sentence of rigorous imprisonment is to relax the severity of the sentence, and to cause the prisoner's simple detention in custody. The same effect follows from suspending a sentence of simple imprisonment, the prisoner whose sentence is so suspended, being placed in the position of a remanded prisoner under trial.

Reg. v. Shonaullah & Adoo, 5 S. W. R. Cr. R. 44.

A sentence of transportation cannot be less than seven years. To bring section 59 of the Penal Code into operation, the punishment awarded in each offence alone must be not less than seven years' imprisonment. A general sentence of transportation for two or more offences, when only one of the punishments awarded is seven years' imprisonment, is illegal.

SUICIDE.

Reg. v. Mohi Pandey & others, 3 N. W. P. Rep. All. 316.

Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her step-sons crying "Ram Ram"! and one of the accused admitting that he told the woman to say "Ram Ram! and she would become suttee" proves active connivance and unequivocal countenance of

the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee.

Reg. v. Chanviova Kour Shidram Shetti, 1 Bom. Rep. Rul. 4.

A prisoner found guilty, under section 309 of the Indian Penal Code, of an attempt to commit suicide must be sentenced to some imprisonment, and not merely to payment of a fine.

THEFT.

Reg. v. Bawool Manjee, 8 S. W. R. Cr. R. 32.

A hired boatman does not come within the definition of a clerk or servant under section 381 of the Penal Code. Theft by such a person on board a boat comes under section 380.

Reg. v. Boidonath Sing, 3 S. W. R. Cr. R. 29.

Theft by constables of property from the house they were employed to guard, is punishable under section 380, and not section 409, Penal Code.

Reg. v. JunghooKhan 3 S. W. R. Cr. R. 36.

Whipping may be substituted for any other punishment for the offence of theft in a dwelling-house.

Reg. v. Juggernath Sing & others, 2 S. W. R. Cr. R. 55.

The prisoners were charged with having stolen a sum of money shut up in a box and placed in the Police Treasury buildings, over which they as burkundauzes, were placed in guard. *Held*, that the charge should have been made under section 381 of the Penal Code (theft by servant in possession of property), and not under section 409 (Criminal Breach of Trust by public servant).

Chidee Chowbee v. Bhowany & Jhaw, 1 S. W. R. Cr. R. 1.

Although section 279 of the Code of Criminal Procedure (Act XXV of 1861) forbids compensation to a person falsely and vexatiously charged with theft, yet the law does not prevent a Magistrate from fining an unjust accuser. The truth or falsity of a withdrawn charge need not be investigated.

Reg. v. Kunee Sonar, 7 S. W. R. Cr. R. 57.

No security can be legally demanded from persons convicted of theft.

Reg. v. Mehar Dowalia, 16 S. W. R. Cr. 53.

A boat may be the subject of theft. Although under section 442 of the Penal Code it is for certain purposes classed with houses, it does not cease to be moveable property under section 378. A charge under section 457 must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment.

Reg. v. Nobin Chunder Holdar, 6 S. W. R. Cr. R. 79.

The prisoner acting *bonâ fide* in the interests of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them pending the orders of his employers. Held, that the prisoner was not guilty of theft.

Reg. v. Preonath Banerjee, 5 S. W. R. Cr. R. 68.

The term "dishonest" in the Penal Code is applied to a person who does anything with the intention of causing wrongful gain or wrongful loss.

Reg. v. Ram Churn Sing, 7 S. W. R. Cr. R. 57.

A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it.

Reg. v. Shib Chunder Mundle & another, 8 S. W. R. Cr. R. 59.

Where a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must with reference to section 114, Indian Penal Code, be considered guilty of the substantive offence under section 378.

Reg. v. Shumeeruddeen, 2 S. W. R. Cr. R. 40.

A person can be convicted of abetment of theft under the first explanation of section 107 of the Indian Penal Code only if he either procure or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient.

Reg. v. Sumbhoonath Pandey, 1 S. W. R. Cr. R. 26.

Appellants charged the prosecutor with theft, and he was handed over to the Police. Held, that the Police, and not the appellants, were responsible for any oppression or extortion practised by the Police on the prosecutor while in confinement.

Reg. v. Sreemunt Adup, 2 S. W. R. Cr. R. 63.

The theft and the taking and retention of stolen goods, form one and the same offence, and cannot be punished separately.

Reg. v. Tincowree, S. W. R. 1864, Cr. R. 31.

A prisoner may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.

Reg. v. Sheikh Mooneah, 11 S. W. R. Cr. R. 38.

Where the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft.

Reg. v. Madaree Chowkedar, 3 S. W. R. Cr. R. 2.

The facts of this case are briefly as follows:—Dhajoo, a poor widow, lived in the same homestead (though in a separate hut) with her landlord, Madaree chowkedar. Dhajoo appears to have owed small sums of money to the villagers. They complained to the chowkedar who, instead of directing the creditors to enforce their claims in a legal manner, took the law into his own hands, and seized the cows and other chattels belonging to the poor woman forcibly, and against her consent, and divided her property amongst her creditors. She brought a charge of theft against the chowkedar under section 378 of the Penal Code, and the Joint Magistrate of Rajshahye, Mr. Wingfield, convicted the prisoner Madaree chowkedar of theft, and sentenced him to two months rigorous imprisonment and a fine of 25 rupees, realizable by distraint, the fine if recovered, to be awarded to prosecutrix after one month.

On appeal the Sessions Judge reversed this decision, holding that the offence was not theft as the chowkedar acted openly, and not for his own profit and without any *animus furandi.*

GLOVER, J.:—The question is, is such a taking "theft?" Theft is defined (Sec. 378 of the Penal Code) to be a dishonest taking of any moveable property out of the possession of any person without that person's consent."

"Dishonest" is by section 24 the doing any thing with the intention of causing "wrongful" loss to a person; and by section 23 "wrongful loss" is loss by unlawful means of property to which the person losing it is legally entitled. Now all these conditions seem to be fulfilled in the present case. There can be no doubt that the woman Dhajoo suffered "wrongful loss" of the three cows, and as little that Madaree, in taking them from her for the benefit of her creditors, caused and intended to cause that wrongful loss, and therefore in the words of the Code, acted "dishonestly."

"The Sessions Judge considers that an illegal taking is not theft, unless it be done '*animo furandi*' and *lucri causâ* but this is not absolutely necessary, as appears from a case cited in Roseoe's 'Criminal Evidence,' p. 585 where a prisoner, who took a horse out of a stable and afterwards backed him down a coal pit, was convicted of "larceny" a conviction upheld by a majority of the Judges. In the present case the intention of Madaree to deprive Dhajoo of her property is established; and it makes no differeuce in the former's guilt that the act was not intended to procure any personal benefit to himself."

Mr. J. KEMP..... There is reliable evidence that the cows belonged to the woman; that they were in her possession; that the taking was against her consent; that it caused her wrongful loss; that the means used to deprive her of property to which she was legally entitled were unlawful, and therefore the taking was clearly "dishonest" in the meaning of that term as laid down in the Code. The learned Commentators, at page 328 of their edition of the Code, state, "It is the intention of the taker which must determine whether the taking or moving of a thing is theft. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person." It must, I think, be admitted that in the present

instance, the chowkeedar, if a man's acts are any guide to his intention intended to cause wrongful loss to the prosecutrix. Finding therefore, all the main elements which make up the offence of theft as defined in section 378 of the Indian Penal Code, to exist in this case, it is my duty to apply the law as I find it, and not to put my own construction upon it. In this view I hold that the offence committed by Madaree chowkeedar was "theft." It may be said that the chowkeedar thought he was doing rough justice; but I have nothing to do with that, my duty is to read the law as it stands.

The CHIEF JUSTICE:—"I concur with the two learned Judges of this Court that the case is one of theft in point of law. Could it be said that a servant would not be guilty of theft if he were to deliver over his master's plate to a pressing "tailor" and tell him to pay himself."

Puran Telee v. Bhuttoo Dome, 9 S. W. R. Cr. R. 5.

A Deputy Magistrate has no power to convict of theft (section 380, Penal Code) where the offence charged is lurking house trespass by night with aggravating circumstances (sections 455 and 459, Penal Code) but must commit on the latter charge.

Nassib Chowdhry v. Nannoo Chowdhry, 15 S. W. R. Cr. R. 47.

The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good.

Sheikh Dullo v. Zainah Bebee & others, 16 S. W. R. Cr. R. 17.

On a conviction for theft in a dwelling under section 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment.

Khetter Nath Dutt v. Indro Jalia & others, 16 S. W. R. Cr. R. 68.

Inability to prove a prescriptive right to fish within certain limits free from payment of rent, is quite distinct from the want of right of any kind to fish therein, rendering a person so fishing liable to be brought up for the theft of fish taken by him.

Hurimoti Moddock v. Denonath Mala & others, 19 S. W. R. Cr. R. 47.

The taking fish in that portion of a navigable river over which a right of julkur exists in another person does not fall within section 378, Penal Code.

Bhusun Parui v. Denonath Banerjee, 20 S. W R. Cr. R. 15.

Where the accused caught fish in a portion of a navigable river which was claimed by the prosecutor, it was held that they could not be convicted of theft, and that if the right of the prosecutor was infringed, he could sue in the Civil Court for damages.

Hossenee Sheikh v. Rajkrishna Chatterjee, 20 S. W. R. Cr. R. 80.

In a charge for stealing, it must be proved that at the time of the act being done the property stolen was in the possession of the prosecutor.

Reg. v. Poromeshur Aheer, 23 S. W. R. Cr. R. 16.

Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.

Kali Churn Lahiree v. Shoshee Bhooshun Sanyal, 23 S. W. R. Cr. R. 17.

The High Court declined to interfere with the order of a Deputy Magistrate, who in a case of theft, dismissed the complaint and fined the complainant under section 209 of the Code of Criminal Procedure (Act X of 1872) for making a frivolous and vexatious complaint.

Reg. v. Ishree Persaud, 24 S. W. R. Cr. R. 49.

All that is necessary in order to constitute the offence of theft in a building, is that the property should be under the protection of the building; it is not necessary to show unlawful entrance into the building.

Empress v. Joggessur Moochi, 3 I. L. R. Calc. 379; S. C. 1 C. L. R. 339.

A Government currency note was stolen from A. and cashed by B. in good faith for C. On the conviction of C. for theft, the Magistrate ordered the note to be given to B. A. appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal under section 419 of the Criminal Procedure Code (Act X of 1872) but submitted the case for the orders of the High Court. Held, that the case could not be disposed of by the Judge under section 419 of the Criminal Procedure Code, and that the words "Court of Appeal" in that section are not necessarily limited to a Court before which an appeal is pending.

Held, further, that the provisions of section 76 of the Contract Act did not apply, as the change of a currency note for money is not a contract of sale, and that as the note came honestly into the hands of B., the order of the Magistrate was right.

Empress v. Troylukhonath Chowdhry & others, 4 I. L. R. Calcutta 366, S. C. 3 C. L. R. 525.

A sought the aid of B. with the intention of committing a theft of the property of B.'s master. B. with the knowledge and consent of his master, and for the purpose of procuring A.'s punishment, aided A. in carrying out his object. On the prosecution of A. for theft, held, that as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed.

NORMAN Offg., C. J. :—The facts of this case are as follows :—

Reg. v. Allah Buksh, 13 B. L. R. 310 note; S. C. 6 B. L. R. App. 133; 15, S. W. R. Cr. R. 51.

Kiamoodden, the gomastah of a shop, called the shop of Mozuffer Meah, was coming out of the Small Cause Court with some books, a khatiyan and a jamakarch, accounts belonging to that shop. Allah Buksh, who had a share in that shop, took these books out of the possession of Kiamooddeen, and kept them against the will of Kiamooddeen saying they were his. The Deputy Magistrate says :—"The fact of Allah Buksh having a right to the papers is not questioned in this case. He may have every right to them; but so long as they are legally in the possession of another person, he cannot get possession of them, except through the Civil Court. It matters little either whether he is any special gainer by taking possession of the papers, when the fact remains that he did take them, and that against the will of the complainant." The Deputy Magistrate found Allah Buksh guilty of theft, and sentenced him to a fine of Rs. 10 and ordered the papers to be returned to the complainant. It appears to me that this conviction cannot be sustained.

Kiamooddeen was the servant of the prisoner Allah Buksh and his partners. By section 27 of the Indian Penal Code, it is declared that, when property is in the possession of a person's servant, it is in that person's possession within the meaning of that Code. The khatyan and jamakharch account must, therefore, be taken to have been in the possession of Allah Buksh and his co-sharers at the time when Allah Buksh took them from Kiamooddeen. Section 378 does not include under the offence of theft the case where one joint proprietor takes into his own sole possession property belonging to himself and his co-proprietors, which had been previously in their joint custody. If the law were as supposed by the Magistrate, no master could safely take his own property from the hand of his servant; no partner in a business could safely take a rupee from the till for the most urgent necessity. It may be that the accused did, or intended to do, some wrong to his co-sharers in taking possession of the books. But if so, the offence, if any, is not theft. I am of opinion that the conviction and order of the Deputy Magistrate must be quashed, and the fine refunded.

Shaik Achani v. Bhagi Halwai, 8 C. L. R. 204.

Persons removing property under the provisions of the Rent Law relating to distraint ought not to be proceeded against under the Criminal Law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Act VIII (B. C.) of 1869.

Empress v. Sita Ram Rai, 3 I. L. R. All. 181.

A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property but as his own property. Held, that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it.

Reference No. 138 of 1869, dated 3rd May, 1869. 1 N. W. P. Rep. All. 298.

The property in stolen cash, and on bills or notes payable to bearer, which circulate as cash, is inseparable from possession ordinarily. The property in stolen goods remains in the person from whom they are stolen.

Reg. v. Adivigadu, 1 I. L. R. Mad. 171.

The accused stole property in foreign territory and was apprehended with it in his possession in a district in British Territory. Held, that section 67 of Act X of 1872 did not give the Courts of such district jurisdiction to try him for the theft. See Reg. *v.* Lakhya Govind (I. L. R. 1 Bom. 50).

Proceedings of 5th Feb. 1869, 4 Mad. Rep. Rul. 30.

A conviction for theft under the Penal Code is illegal if the owner has given up all property in, and all possession of the subject of the alleged theft.

Proceedings of 16th May, 1870, 5 Mad. Rep. Rul. 23.

Two persons were committed for trial, the 1st prisoner for adultery, enticing away a married woman, and theft, and the 2nd prisoner for abetment of the enticing away and theft. The 1st prisoner was acquitted of the charges of adultery and enticing away. The case for the prosecution was, that the prosecutor's wife left her husband's house in company with the 1st prisoner and that previous to her departure she, by means of false keys supplied to her by the 2nd prisoner, opened the room where the family jewels and money were kept and removed them. The jewels were deposited with the 2nd prisoner for safe custody. Part of the money was handed to the 1st prisoner. Held, that notwithstanding the acquittal, the prisoners were not entitled to be discharged without trial on the charge of theft.

Proceedings of 22nd Oct. 1870, 5 Mad. Rep. Rul. 36.

The moving by the same act which effects the severance may constitute a theft.

Proceedings of 28th Oct. 1870, 5 Mad. Rep. Rul. 37.

The prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. Held, that the conviction was bad.

Shriram Venkata Sami, Appellant, 6 Mad. Rep. 120.

In a trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (section 401, Penal Code), the Judge should, in his charge, put clearly to the jury (1) The necessity of proof of association. (2) The need of proving that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts.

Collector of Salem, petitioner, 7 Mad. Rep. 233.

A Rupees-50 Currency note was changed by one M. at the Government Treasury on the Shevaroy Hills. Said M. was subsequently convicted by the Sessions Court of Salem of having stolen the note from one S. The note was produced in evidence at the trial, and the Court directed it to be given up to S. from whom it had been stolen. Held, that the Sessions Court was wrong. That a note of this kind being in legal view money, the property in it passes by mere delivery, and that nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule.

Proceedings of 18th Feb. 1873, 7 Mad. Rep. Rul. 19.

Accused was convicted by an Assistant Magistrate, of theft of paddy. The facts found were that prisoner was found in possession of rice not thrashed in the usual way, and that having no paddy land of his own, he failed to account satisfactorily for the possession of the rice. Held, that this was such a case as no Judge would leave to a jury, and that the conviction must be quashed as founded upon evidence, which if all true, would not justify the inference of guilt. The meaning of the word "*corpus delicti*" explained.

Reg. v. Tamina Ghantaya & others, 4 I. L. R. Mad. 228.

A swamp, the property of Government, having been surrounded with police guards by Government to prevent salt being removed. Held, that the taking against the will of Government, and with the intention of obtaining an unlawful gain of salt, which had been spontaneously produced on the swamp, was theft.

Aradhun Mundul v. Myan Khan Takadgeer & another, 24 S. W. R. Cr. R. 7.

The illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience and annoyance.

Subramania Ghanapati v. The Queen, 3 I. L. R. Mad. 261.

Where the plainfiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him) snatched up the bond which was lying beside the arbitrator ran away, and refused to produce it. Held, that the offence committed was not theft, but secreting a document under section 204 of the Indian Penal, Code.

Reg. v. Boya Linga & others, 5 I. L. R. Mad. 268.

Sheep-stealing, when the value of the sheep is less than a rupee, is cognizable by a village Magistrate under Regulation IV of 1821 as a petty theft: but a sentence of fine by a village Magistrate in such cases is illegal.

Reg. v. Revu Pothadu, 5 I. L. R. Mad. 390.

The wrongful taking of fish from a creek is not theft.

Reg. v. Hanmanta & others, 1 I. L. R. Bom. 610.

Possession of wood by a forest inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft, within the meaning of section 378 of the Indian Penal Code, if that consent was unauthorized or fraudulent.

Reg. v. Kusha, 1 Bom. Rep. 88.

A First Class Subordinate Magistrate has no jurisdiction to try a charge of theft in a house under section 380 of the Indian Penal Code (*sed vide* Act VIII of 1866, section 1).

Reg. v. Kasya bin Ravji et al., 5 Bom. Rep. Crown Cases, 35.

Conviction and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground, came within the meaning of section 95 of the Indian Penal Code, and did not, therefore, amount to an offence.

Reg. v. Yessappa bin Ningappa, 5 Bom. Rep. Crown Cases, 41.

Where loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused, as amends to the owner of such property, although the stolen property is recovered and restored to the owner.

Reg. v. Mahipya valad Bomya Mahar, 5 Bom. Rep. Crown Cases, 99.

Where a policeman in whose sight a theft was committed arrested the thief, and being himself unable to take or send the accused to a Magistrate, sent a report, on which the Magistrate issued a warrant; Held, that, under these circumstances, the accused was legally brought before the Magistrate.

Reg. v. Khata Bai, 6 Bom. Rep. Crown Cases, 9.

A Muhammadan married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband.

Reg. v. Natha Kayan & Bai Lakhi, 8 Bom Rep. Crown Cases, 11.

A Hindu woman who removes from the possession of her husband, and without his consent, her *pallá* or *stridhan* cannot be convicted of theft, nor can any person who joins her in removing it, be convicted of that offence.

Reg. v. Mansang Bhavsang, 10 Bom. Rep. 74.

Dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such offence. (*Per* BAILEY and WEST, JJ.) But removal for one's own use from a creek of such salt not legally appropriated, constitutes no offence either

under the Indian Penal Code or Acts XXXI of 1850 or XXVII of 1837, though under section 7 of the latter Act, made applicable by section 8 of the former, the salt removed becomes liable to detention. (*Per* LLOYD and KEMBALL, JJ.)

Abdul Guffoor, petitioner in re, 10 C. L. R. 54.

So far as it may be necessary for the purposes of the trial, when books are the subject of a charge of theft, the accused is entitled to inspection of the books. It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement.

The judgment of the High Court (PRINSEP and WILSON, JJ.) was as follows :—

In this case we are of opinion that the conviction must be quashed. A number of irregularities have been shewn to have occurred in the course of the trial of greater or less importance. The first of those which we think it necessary to notice is with regard to the two books which form the subject-matter of the charge. It appears from the record of the proceedings that when those books were produced and identified by one of the witnesses, the Counsel for the defence desired to examine them, but he was not allowed to do so, the Magistrate making an order that neither side should see the books,—apparently a very impartial order, but practically a very one-sided one. It seems to us, without going into the question as to the extent of the inspection that the prisoner or his Counsel might be entitled to, that, at least so far as was necessary, for the purposes of the trial, he was entitled to inspect the books. Speaking for myself (WILSON, J.) I wish to guard against saying, that if any one was found making undue use of these books, taking copies of them for instance, the Court would not be justified in preventing this, but it does seem to us that for the purposes of the trial, the prisoner, or those representing him were entitled to inspect the books. It is impossible to say that the examination would not have thrown great light on the subject of the guilt or otherwise of the accused. The prisoner was charged with the theft of two books from Mr. Bretton's room, and it is said for the defence that the accused did not remove the books, and that he had seen them for the first time near the gate. It is impossible to say that the examination of these books might not have thrown light on the subject of which of the two stories was the true one, or that the refusal of the Magistrates to permit an inspection, did not prejudice the accused.

The second irregularity that appears to have occurred is, that the Counsel for the accused formally asked, that he should be examined, which practically means, that the prisoner should be allowed to make a statement in the first instance, and that was refused at the time, and he was not examined at any later period. That we think was a grave error on the part of the Bench. The third error which Mr. Gasper, appearing in support of the conviction, admitted to be an error, was allowing the diary of the Police Inspector to be admitted as evidence. It may well be, that that last error did not affect the result, but that it is a defect in the proceedings, there can be no doubt. These three are all of them serious irregularities in the conduct of the case. It might be, however, that all these irregularities might not, in our judgment have been sufficient reason for quashing this convic-

tion; but there is another defect in the trial which appears to us absolutely fatal. Putting aside the error in the form of the charge, the substance of the charge was, that the prisoner stole two books out of the possession of Mr. Bretton. It was necessary therefore to shew that the accused person took them dishonestly, and that he took them without the consent of the person out of whose possession he took them. The story of the prosecution was, that he went up to Mr. Bretton's room along with the sirdar bearer, and that he brought away these books, telling the bearer that he had Mr. Bretton's authority for doing so, now that would or would not be stealing, according as it was shewn that the accused had or had not the permission of Mr. Bretton to remove the books, but strange there is no evidence that Mr. Bretton had not sent him, and in the absence of such evidence the offence charged is not proved. It was suggested by Mr. Gasper that the line of cross-examination taken on behalf of the prisoner by his Counsel in cross-examining the witness for the prosecution relieved the prosecution from proving that element of the crime, because the cross-examination had been addressed to shew that the prisoner had never removed the books out of the possession of Mr. Bretton, but it appears to us that the cross-examination on behalf of the defendant can never relieve the prosecution from proving any essential element in the charge.

At the close of the case for the prosecution, the Counsel for the prisoner applied to the Magistrates to dismiss the case on this very ground, *viz.*, that the prosecution had not given evidence in support of their case, that Mr. Bretton had not authorized the removal of the books and we think that the case should have been dismissed on this ground. For these reasons we quash the conviction and sentence."

Reg. v. Tincowree, S. W. R. 1864 Cr. R. 31.

A person may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though, if the Judge considers the punishment for the first sufficient, he need not award any additional sentence for the second.

Proceedings of 17th March 1866. Weir, 149.

Theft of an object placed on the top of a house is simple theft, not theft in a building or house-breaking.

Proceedings of 21st Aug. 1872. Weir, 150.

The conviction of certain zemindari ryots for carrying away produce to a share of which the zemindar was entitled, upheld on the principle that they were dishonestly converting a "*compossessio*" into an exclusive possession.

Proceedings of 23rd Oct. 1878. Weir, 150.

The capture of fish in and their removal from the ordinary open irrigation tanks of Southern India does not amount to theft.

Proceedings of 10th April 1880. Weir 151,

The above ruling followed in a case of capture of fish from a tank used for the storage of water for agricultural purposes in the possession of the complainant, and in the midst of his private paddy fields.

Fish which were not stored in a tank for consumption but which have been spawned in a tank used for the storage of water for agricultural purposes are not, until they have been captured, in the possession of the owner so as to constitute the taking of them without the owner's consent, theft.

Proceedings of 24th Feby., 1880. Weir, 151.

The forcible taking of property attached by a Civil Court, from the possession of a private person to whom such property has been entrusted for custody by the attaching officer, may constitute theft, or may amount to robbery if the necessary violence is used.

Where the person in actual charge of the attached property is not a public officer, sections 183, 184, 204, and 424 of the Penal Code do not apply.

Proceedings of 28th Febry., 1880. Weir, 152.

Taking property out of the possession of another and thereby causing the owner wrongful loss, is a dishonest taking and therefore theft, unless the taker had reasonable ground for believing himself entitled to take the property. It makes no difference that the taking was intended to be only for a time.

Proceedings of 13th Decr., 1880. Weir, 154.

A conversion of joint possession of property into exclusive possession constitutes the offence of theft, and not of criminal misappropriation.

Tiruvengada Chari, petitioner. Weir, 154.

To constitute the offence of theft under the Penal Code, it is not necessary to show that the wrongful loss was intended to be a permanent loss. Judgment:—"In the present case, both Courts are agreed that the accused removed the complainant's cloth and took it out of the possession of the complaint, without the complainant's consent. Did he do so dishonestly? The Appellate Court finds that he did it in order to put pressure on the complainant to give an award in his favour in an arbitration to which the accused was a party, and wherein the complainant was an arbitrator. This may have been his immediate motive, but seeing that the act caused the complainant wrongful loss—loss of the use of his cloth so long as it was detained—the accused must be held to have intended the natural consequences of his act—that is to say, to cause such loss. There is nothing in the definition of the offence, to support the view of the Magistrate that the loss intended must be a permanent loss. The law of India and the law of England respecting the offence of theft are not in accord on this point. The order of the Joint Magistrate is set aside, and the conviction and sentence affirmed."

Proceedings of 13th Sept., 1880. Weir, 157.

The taking of wood by zemindari ryots from a zemindari forest under a *bonâ fide* belief of right arising from usage, held not to constitute theft.

Govt. Pleader, petitioner. Weir, 158.

Removal of spontaneous salt from a swamp not proved to be guarded by Government so as to be in their possession, held not to be theft.

Dadala Atchigadu Appellant, 159.

Where a lien is created on property by operation of law, such as distraint, the property is in the possession of the distrainer, and its removal from such possession constitutes theft.

Balos alias Hussain Saib, accused. Weir, 160.

A sale of trees belonging to others and not cut down at the time of sale, does not constitute theft.

Proceedings of 28th Oct. 1870. Weir, 160.

A theft from a verandah which is outside the house, is not a theft in a building.

Proceedings of 8th April 1880. Weir, 161.

Theft from a brake-van of a train, does not constitute theft in a building, tent or vessel, or house-breaking, nor unless the brake-van has been broken open or unfastened, does it constitute the offence of breaking open a closed receptable containing property. The conviction upheld as a conviction of theft by a servant.

Proceedings of 13th Augt. 1880. Weir, 161.

Theft in a Railway carriage is not theft in a building, tent or vessel. The conviction upheld as a conviction of simple theft.

Kuraman Musalayya & another, accused. Weir, 162.

The meaning of the word "vessel" in section 380 discussed.

Proceedings of 3rd June, 1881. Weir, 162.

Accused, the owner of a cart, hired for the purpose of conveying certain property belonging to the complainant, to the complainant's house, abstracted a portion of the property. Held, that the accused was not engaged as a common carrier, that the property though in his custody, was not in his possession, but in that of the complainant, and that therefore, the offence committed was theft by a servant, and not criminal breach of trust by a carrier.

Proceedings of 5th January, 1866. Weir, 238.

Jurisdiction. Circumstances in which Subordinate Magistrates should refrain from exercising jurisdiction in respect of the offence of theft.

Poceedings of 23rd Sept., 1878. Weir, 298.

Offences of theft, theft in a building, and theft by a servant, are not triable summarily when a previous conviction of an offence under chapter XVII of the Penal Code, is also charged.

There may be circumstances in which a Magistrate trying an offence need not necessarily advert to the fact of a previous conviction.

TORTURE.

Reg v. TarineeChurn Chuttopadhya & others, 7 S. W. R. Cr. R. 3.

Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others.

Reg. v. Behary Singh & others, 7 S. W. R. Cr. R. 3.

Exposition of a police officer's powers of arrest and detention of accused persons and witnesses, with a view to the suppression of the practice of torture.

MARKBY, J. . . . . .

From the number and nature of these cases which come before us, we fear that such acts of violence and oppression on the part of the police are far from rare; and we think it right prominently to notice them, in order that the subject may receive attention in the proper quarter. In the meantime, we consider it our duty to point out that, if the existing provisions of the Code of Criminal Procedure (Act XXV of 1861) were rigidly enforced (and we consider it the duty of every judicial officer, as well as of every police authority, to see that this is done), such atrocities as these would be almost impossible.

It seems to be generally supposed, and the supposition seems to be generally acted on, that police officers, in making enquiries into criminal cases, are limited only by their own discretion as to what persons they may arrest and detain in custody. But so far from this being the case, the powers of a police officer to arrest without warrant are strictly defined by the Code of Criminal Procedure (Act XXV of 1861). The widest power is that conferred by para. 2 of section 100, which provides that a police officer may arrest without orders from a Magistrate, and without warrant, any person against whom a *reasonable* complaint has been made, or a *reasonable* suspicion exists of his having been concerned in any offence specified in the schedule to the Act, as offences for which police officers may arrest without a warrant. What is a reasonable complaint or suspicion, must depend on the circumstances of each particular case; but it must be at least founded on some definite fact tending to throw suspicion on the person arrested, and not on mere vague surmise or information. Still less have the police any power to arrest persons as they appear sometimes to do, merely on the chance of something being hereafter proved against them. Any wilful excess by a police officer of his legal powers of arrest is, by section 220 of

the Penal Code, an offence punishable by imprisonment for seven years. With regard to persons whose evidence is required by a police officer making an enquiry, no power exists to arrest or detain them for a single moment. An officer in charge of a police station may, under section 144 by an order in writing, require the attendance before him of persons whose evidence is necessary, and the person summoned is bound to obey the order; but in no case can the police officer compel a witness by force to attend before him.

Moreover, if, as is frequently the case, a police officer, without arresting a person himself, directs some of the neighbours to take charge of him, the police officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody.

Moreover, even, if a person be rightly arrested, it does not rest with the discretion of the police officer to keep the prisoner in custody where and as long as he pleases. Under no circumstances can he be detained without the special order of a Magistrate more than 24 hours. At the expiration of 24 hours, unless the special order has been obtained, the prisoner must either be discharged or sent on to the Magistrate, and any longer detention is absolutely unlawful; and though the Code is not so express upon the place as the time of confinment, still we think it is perfectly clear that it was intended that, where a police officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the police station, and be placed in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the enquiry.

If these provisions of the Legislature were strictly enforced, and supplemented by a few rules in the same spirit by the police authorities, it is clear that such crimes as that which has suggested these remarks could not be committed except under circumstances which would justify a superior officer being held responsible for them. That even superior officers of police are not incapable of ill-treating the prisoners under their charge, has unfortunately been shewn by cases which have come recently before us, but this comparatively small number of offences, it may not, by careful administration, be altogether hopeless to improve.

UNLAWFUL ASSEMBLY.

Reg. v. Dinnobundhoo Rai & others, 9 S. W. R. Cr. R. 19.

In order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under section 141 of the Penal Code.

Reg. v. Dushruth Roy & others, 7 S. W. R. Cr. R. 58.

Where persons join an unlawful assembly for the purpose of committing an assault, and instead of preventing those armed from using their weapons, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.

Reg. v. Kabil Cazee, 3 B. L. R. A. Cr. R. 1.

A large body of men belonging to one faction, waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which, a member of the first mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement, a member of the 2nd faction was killed. Held, (by NORMAN, J. whose opinion prevailed) that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under section 149 of the Penal Code, be made liable for the subsequent murder. Held, by JACKSON, J. that he remained a member of the unlawful assembly.

Foiz Ali alias Imdad Ali & others, 1 S. W. R. Cr. R. 20.

To convict a prisoner of being a member of an unlawful assembly, and of culpable homicide not amounting to murder, it must be shown that he had an illegal object in common with, and took part in the illegal act done by the others.

Golam Arfin in re, 4 B. L. R. Ap. 47; S. C. 13 S. W. R. Cr. R. 33.

Where a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother. Held, that all those who were members of the assembly at the time such person was killed, were guilty of the offence of killing her.

Reg. v. Assan Shurreef & others, 13 S. W. R. Cr. R. 75.

Where a police officer duly appointed under Act V of 1861 was engaged in the discharge of his duty as such police officer, at a time when an unlawful assembly took place; it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended, was convicted of rescuing from lawful custody, within the meaning of section 225 of the Penal Code.

Reg. v. Kendra Kamar & others, 7 S. W. R. Cr. R. 97.

Case of an unlawful assembly, the members of which were held guilty of an offence under section 402 of the Penal Code, on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.

Reg. v. SurroopChunder Paul & another, 12 S. W. R. Cr. R. 85.

Held that the owner or occupier of land on which an unlawful assembly is held, cannot be convicted under section 154 of the Penal Code, unless there is a finding that the riot was premeditated.

Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, in as much as they do not have "one common object" within the meaning of section 141 of the Penal Code.

House-trespass and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly, armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.

Reg. v. Surroop Napit, 3 S. W. R. Cr. R. 54.

Procedure to be observed in the case of a charge under section 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot case is no evidence in the case uuder section 154.

Betts C. G. D. in re, 15 S. W. R. Cr. R. 6; S. C. 6 B. L. R. Ap. 83.

There is no ground for the distinction between an unlawful assembly as a premeditated act, and an affray as a sudden one; for, according to section 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

Lokenath Kar & others, petitioners, 18 S. W. R. Cr. R. 2.

It cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect.

Birjoo Singh vs. Khublall & others, 19 S. W. R. Cr. R. 66.

In this case in which the prisoners were convicted of being members of an unlawful assembly under section 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to show what was the specific unlawful object, within the scope of clauses 3 and 4, of the persons composing the assembly.

Koylash Chunder Dass & others, petitioners, 20 S. W. R. Cr. R. 78.

No charge of being members of an unlawful assembly under section 141, Penal Code, can be sustained, where the intention of the parties was not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.

Shunkur Singh & others, petitioners, 23 S. W. R. Cr. R. 25.

Where after the object of an unlawful assembly had been accomplished, and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a fish spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object.

Reg. v. Binod Kokaram & others, 24 S. W. R. Cr. R. 66.

If a body of men armed with latties, and under the leadership of one who, to the knowledge of the rest is armed with a gun, assemble for the purpose of forcibly carrying off another man's property; and if, in effecting that purpose, any one of the party, taking the gun, shoots

Hari Singh & others v. The Empress, 3 C. L. R. 49.

and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under section 149 of the Indian Penal Code. The Queen *v.* Sabid Ali (20 S. W. R. Cr. 5 cited).

Radhanath Chowdhry & another in re, 7 C. L. R. 289.

To constitute an offence under section 157 of the Indian Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as lattials, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under sections 154, 155 of the Indian Penal Code.

Proceedings of 10th Augt., 1880. 4 Mad. Rep. Rul 65.

Where the defendants, ryots of portion of a zemindary sold in execution of a decree of a Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the ryots were assembled in such numbers and so armed that nothing could be done against them. Held, by the High Court that the acts of the defendants did not amount to an offence under section 141 of the Penal Code.

Proceedings of 2nd Novr., 1880. Weir, 29.

Assembling for the purpose of gambling does not constitute an unlawful assembly.

Peary Mohun Sircar v. The Empress, 9 I. L. R. Calc. 639; S. C. 13 C. L. R. 80.

On the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with *latties;* that they were prepared to use force if necessary; and that the *lattials* kept off the opposite party by brandishing their weapons while the land was sowed.

Held, that the accused were rightly convicted of being members of an unlawful assembly under section 143 of the Penal Code. Sunker Singh *v.* Burmah Mahto (23 W. R. Cr. 25) distinguished.

Reg v. Sabid Ali & others, 20 S. W. R. Cr. R. 5.

Held (AINSLIE J.:—dissenting) that section 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within section 149 the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the

common object of the unlawful assembly, is one of which the accused knew would be likely to be committed in prosecution of the common object.

Per JACKSON, J. :—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in section 141 which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of section 149.

Where a certain number of persons, members of an unlawful assembly (party A.) attacked another party (B.) who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A. fired a gun at, and killed one of the persons in party B. in consequence of a sudden and unexpected resistance which was offered by party B. it was held (AINSLIE, J. dissenting) on a consideration of the evidence that the persons composing party A. other than the person who fired the gun, could not be convicted of murder under section 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under section 148 of the Penal Code.

VALUABLE SECURITY.

Kapalavaya Saraya Ex parte, 2 Mad. Rep. 247.

A settlement of accounts in writing, though not signed by any person, is a "valuable security" within the definition of section 30 of the Indian Penal Code.

Proceedings of 5th Augt., 1873. 7 Mad. Rep. Rul. 26.

The fact that a document has not been stamped, and is not, therefore, receivable in evidence does not prevent its being a "valuable security" within the meaning of the Penal Code.

WRONGFUL CONFINEMENT.

Reg. v. Ameer Deragh, 4 S. W. R. Cr. R. 3.

Held, by the majority of the Court that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the prisoner's house, and was not a willing inmate while she was there.

Reg. v. Komul Manjee & others, 7 S. W. R. Cr. R. 13.

The offence of illegal confinement for more than 10 days is triable only by the Court of Sessions or by the Magistrate of the district, but not by a Deputy Magistrate.

Reg. v. Shamsoondur Ghosal, 3 S. W. R. Cr. R. 28.

A Deputy Magistrate cannot try a case which includes a complaint of wrongful confinement and extortion, but should follow the rule laid down in section 276 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Suprosunno Ghosaul, 6 S. W. R. Cr. R. 88.

The time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment. In no case is a police officer justified by section 152, Code of Criminal Procedure (Act XXV of 1861) in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case.

Haran Sheikh v. Ramdhun Biswas & others, 24 S. W. R. Cr. R. 21.

Where a charge under the Indian Penal Code, section 342 (wrongful confinement) was substantiated against certain prisoners, the Joint Magistrate was held not to have been justified in treating the case as one of unlawful assembly (section 143), and disposing of it summarily under the Code of Criminal Procedure (Act X of 1872), section 222.

Parankusam Narasaya Pantulu v. Stuart & another, 2 Mad. Rep. 396.

The retaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will.

Proceedings of 13th June, 1870. 5 Mad. Rep. Rul. 24.

Four persons, two of them police constables and two village officers were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. Held, a good conviction.

Govt. Pleader v. VenkatachalaMudali. Weir, 129.

Detention through the exercise of moral force without the accompaniment of physical force or actual conflict, is sufficient to constitute the offence of wrongful confinement. Assistance given by a village magistrate not in a judicial but in an executive capacity, will not render an illegal custody legal.

Empress v. Sreenath Banerjee & another, 9 I. L. R. Calc. 221.

In order to render a person liable under section 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered.

WRONGFUL RESTRAINT.

Jowahir Shah v. Gridharee Chowdhry & others, 10 S. W. R. Cr. R. 35.

Where the accused prevented the complainants from proceeding in a certain direction with their carts, and exacted from them a sum of money on a false plea. Held, that accused were guilty of wrongful restraint, and not of theft.

Budrool Hossein, petitioner, 24 S. W. R. Cr. R. 51.

In a case of a police officer charged under the Indian Penal Code, section 342, where there was no malice, no intention of doing an act of the nature spoken of in section 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police officer, the facts were held not to amount to the criminal offence of wrongful restraint.

Venkatachalam Pillai, accused. Weir, 28.

The prevention of the building of a party-wall between two adjoining backyards, held not to constitute wrongful restraint.

Karaturi Nagamma, accused. Weir, 129.

A verbal remonstrance against, or prohibition of an act, does not amount to wrongful restraint.

END OF PART I.

PART II.

EVIDENCE.

Reg. v. Ahmed Ally & others, 11 S. W. R. Cr. R. 25.

The practice of not examining a police officer who investigates a case condemned. The statements made to him might be proved by him in the witness-box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and Sessions Judge under section 31, Act II of 1855.

Reg. v. Alum Sheik, 5 S. W. R. Cr. R. 2.

A Magistrate should take evidence as to the general character of a person charged with bad livelihood, and not convict him on the report of a police officer, which is not evidence, except against the officer making it.

Reg. v. Amanoollah Moollah, 6 S. W. R. Cr. R. 5.

Section 48, Act II of 1855 is applicable to criminal trials. The test of comparison of native seals is at least but a fallible one, and must always be received with extreme caution.

Reg. v. Beharee Dosadh & others, 7 S. W. R. Cr. R. 7.

Evidence of bad character is not admissible. Misreception of evidence is a defect or irregularity within the meaning of sections 426 and 439, Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Bheekun Doss, 7 S. W. R. Cr. R. 114.

When a deposition is received in evidence under section 369, Code of Criminal Procedure (Act XXV of 1861) at a trial before a Sessions Judge, there ought to be on the record, distinct proof of the existence of such a state of things as makes the deposition legal evidence.

Reg. v. Bheko Singh & others, 7 S. W. R. Cr. R. 108.

Bare statements of prisoners are not admissible in, and ought not to be alluded to by the Judge as evidence. Nor is evidence taken before the Magistrate, unless contradictory of the evidence of the same witnesses as given before the Sessions Court, evidence in a trial, or proper to be put to the jury.

Reg. v. Bhugwan Dosadh & another, 4 S. W. R. Cr. R. 18.

The admissions of prisoners in their statements before the Magistrate ought to be given in evidence at the trial. A Sessions Judge's notes of the evidence should be sent up in a legible form.

Reg. v. Bindu & others, 8 S. W. R. Cr. R. 80.

The evidence of one witness, if credible, is legally sufficient proof of any but certain exempted offences.

Reg. v. Bissen Nath & another, 7 S. W. R. R. Cr. R. 31.

It is not competent to a Court of Session to inspect an original report from the office of the Superintendent of Police, and to make it evidence against the prisoners. Statements made otherwise than before the Courts, and officers specified in section 31, Act II of 1855 may be given in corroboration of testimony; but such statements must be regularly proved by the person who received them, or by some one who heard them given.

Reg. v. Chandra Kant Chuckerbutty, 1 B L. R. Cr. 8; S. C. 10 S. W. R. Cr. R. 14.

The question whether a communication between the accused and a witness is privileged, is a question of law for the Judge to decide. Communications between mooktears and their clients are not privileged within section 24 of Act II of 1855. See now section 126 of the Evidence Act (I of 1872).

Reg. v. Gogalao & others, 12 S. W. R. Cr. R. 80; S. C. 4 B. L. R. Ap. 50.

In order to make the evidence of a deceased witness legally admissible, provided the admission of the evidence is questioned, it is strictly necessary to prove the death of the witness. Proof of such a fact may be dispensed with if the prisoner's Counsel admits it.

Reg. v. Gopal Thakoor, 6 S. W. R. Cr. R. 72.

Remarks on the improper admission, at the Sessions trial with the aid of assessors, of a chowkidar's statement as to the previous bad character of the accused.

Reg. v. Hurry Persad & others, 6 S. W. R. Cr. R. 85.

Where a committing officer in his grounds of commitment makes statements tending to criminate the prisoners, they cannot be used as evidence against the prisoners, if they were not reduced to writing and without the examination on oath of the committing officer in the presence of the prisoners.

Reg. v. Jaga Poly, 11 S. W. R. Cr. R. 39; S. C. 7 B. L. R. 67 note.

Where a statement made by an accused before the Magistrate bear the Magistrate's attestation, proof of the statemen having been made is not necessary, but the proceedings must be presumed to be regular until the contrary is shown. A summing up of the evidence i not required in a case tried by assessors.

Reg. v. Chotey Lall & another, 3 N. W. P. Rep. All. 271.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. It is also an irregularity to prepare the charge against a prisoner after his defence has been recorded.

Reg. v. Kalu Mal & others, 7 S. W. R. Cr. R. 103.

A Judge cannot properly weigh evidence which starts with an assumption of the general bad character of the prisoners.

Reg. v. Kalichandra Shah, 7 B. L. R. 322; S. C. 16 S. W. R. Cr. R. 13.

In a proceeding under section 318 of the Criminal Procedure Code (Act XXV of 1861) to determine the right of actual possession, it is necessary that evidence should be taken upon oath.

Reg. v. Kali Sirkar, 4 B. L. R. Ap. 1; S. C. 13 S. W. R. Cr. R. 1.

A belief founded on private and anonymous information is not "knowledge" within the meaning of section 68 of the Criminal Procedure Code (Act XXV of 1861). In the matter of Moheschunder Bonnerjee. Reg. *v.* Purnachunder Bonnerjee.

Reg. v. Kaminee Dossee, 12 S. W. R. Cr. R. 25.

A letter of a medical officer expressing an opinion is not evidence under sections 368 and 370 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Kartick Chunder Holdar & others, 9 S. W. R. Cr. R. 58.

Documents which were tendered in the Civil suit, if relied on in a prosecution for giving false evidence must be proved in the Criminal Court before they can be received as evidence.

Reg. v. Khyroollah & others, 6 S. W. R. Cr. R. 21; S. C. B. L. R. Sup. Vol. Ap. 11, F. B.

Held, by the majority of the Court (NORMAN, J. dissenting) that, upon trials in the mofussil, a wife is competent to give evidence for or against her husband, or for or against any person tried jointly with her husband.

(But see now section 120 of the Evidence Act I of 1872).

Reg. v. Zulfukar Khan, 8 B. L. R. Ap. 21; S. C. 16 S. W. R. Cr. R. 36.

Evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. Intoxication wrongly treated as an aggravation of offence.

Reg. v. Mahima Chundra Das, 6 B. L. R. Ap. 108; S. C. 15 S. W. R. Cr. R. 37.

Evidence of accomplices—Judges summing up—Evidence of accused's bad character—Improper admission of Evidence—Discharge of prisoner on appeal—Recording depositions.

Reg. v. Mussamut Joomnee & others, 8 S. W. R. Cr. R. 16.

Recognition of things not before the eyes of deposing witnesses, is not evidence against a person accused of having been in possession of those things.

Reg. v. Nabadwip Goswami, 1 B. L. R. O. Cr. 15.

Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, and the prisoner pleaded not guilty. Held, that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue.

Reg. v. Nakur Sircar, 6 B. L. R. 729.

The summons-book of the Small Cause Court, Calcutta, is admissible in evidence, though not signed by the presiding Judge.

Contra, Reg. v. Shibchandra Das, 6 B. L. R. 730 note.

Reg. v. Nawab Khan, 7 S. W. R. Cr. R. 25.

It is the duty of a Sessions Judge to give a summing-up of the evidence as recorded before him, and to state his own reasons for considering a prisoner guilty.

Reg. v. Nobocoomar Banerjee, 3 S. W. R. Cr. R. 21.

Conviction quashed, the accused not having been allowed an opportunity to examine certain witnesses.

Reg. v. Nobo Kisto Ghose, 8 S. W. R. Cr. R. 87.

The deposition of a witness in a former case, is not evidence in a subsequent case in which he is examined, except when put in to contradict him.

Where certain portions of a police officer's diary are used as evidence against him, section 154 of the Code of the Criminal Procedure, (Act XXV of 1861) does not bar the admission of other portions of the diary, as explaining the portions so used. (See now section 172, Act X of 1882.)

Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. A Judge should not discuss points of law in summing-up to the jury, and he should avoid all extraneous and unnecessary argument, merely summing-up the evidence, and showing how the law applies to it.

Reg. v. Nomal, 4 B. L. R. A. Cr. 9; S. C. 12 S. W. R. Cr. R. 69.

Where a witness makes a statement before the Court of Sessions which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot under section 172, Act XXV of 1861, be said that an offence has been committed under the cognizance of the Court of Sessions. A Judge's duty in dealing with the contradictory statements of a witness, discussed.

Govt. v. Madun Dass, 6 S. W. R. Cr. R. 52.

Police reports are not evidence except against the reporting police officer.

Nilkunt Biswas, case of, 9 S. W. R. Cr. R. 29.

Evidence which does not support a conviction on a criminal charge, cannot justify a removal from a profession, (the present case being that of a mooktear).

Chintamonee Nye, petitioner, 11 S. W. R. Cr. R. 2.

The substance of a report from a subordinate medical officer with an expression of concurrence by his superior, cannot be read in evidence under section 368 of the Code of Criminal Procedure (Act XXV of 1861). The deposition of person murdered, taken before Magistrate, and the medical evidence should be annexed to the Sessions record.

Purmessur Singh & others v. Soroop Audhikaree, 13 S. W. R. Cr. R. 40.

Where the evidence of witnesses given on a previous trial was read over and used in a subsequent trial *at the express request of the prisoners*, instead of the witnesses being examined *de novo*, the High Court declined to interfere, with reference to sections 426 and 439, Code of Criminal Procedure (Act XXV of 1861), as the irregularity of procedure was one by which the prisoners were not prejudiced.

Jankee & others, petitioners, 18 S. W. R. Cr. R. 33.

The identification of an accused after the evidence for the prosecution has been completed, will not be legally sufficient if there is nothing to show that the witnesses were on their oaths at the time they made the identification.

Reg. v. Degumber Thakoor & others, 19 S. W. R. Cr. R. 44.

In a case of murder, the statement made by the deceased in the presence of his neighbours and of a head constable, was admitted as relevant evidence, under section 32, Cl. I, Act I of 1872, that section providing that such statement is relevant whether the person who made the statement was or was not at the time when it was made under expectation of death.

Reg. v. Mowjan alias Nane Khan, 20 S. W. R. Cr. R. 69.

When the evidence of an absent witness is admitted under section 33 of the Evidence Act, I of 1872, the ground for its admission should be stated fully and clearly, to enable the High Court to judge of the propriety of its admission. In the present case, the High Court considered that the evidence of an absent witness had been improperly admitted, because there was nothing to show how that by ordinary care and the use of ordinary means the witness could not have been produced. In order to make a deposition admissible under the section 33, there must be evidence that the accused person did, in fact, have an opportunity of cross-examining.

Reg. v. Etwaree Dharee, 21 S. W. R. Cr. R. 12.

Section 327 of the new Code of Criminal Procedure (Act X of 1872) which permits the deposition of a witness to be taken in the absence of an accused person who has absconded, does not apply to a deposition taken before the new Code was passed. Under section 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. Where section 327 does apply, it should be shown that when the former deposition was taken, the accused had absconded, and after due pursuit could not be arrested.

Reg. v. Tarinee Churn Bose, 21 S. W. R. Cr. R. 31.

Under Act VI of 1872, section 5, the omission to take any oath, or any other irregularity in the form in which it is administered, does not invalidate the proceedings. The High Court declined to interfere, under section 296, Act X of 1872 with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order; though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case.

Reg. v. Lukhun Santhal, 21 S. W. R. Cr. R. 56.

Before a Sessions Judge can, under section 33, Act I of 1872 admit the depositions of witnesses given in a former judicial proceeding as evidence before him instead of, and in place of the oral depositions of the witnesses themselves, it ought to appear that the presence of the witnesses could not be obtained without an amount of delay or expense which the Court considers unreasonable; and if there is nothing of a special nature to stand in the way, the case should be adjourned to the next Sessions to procure the attendance of the witnesses.

Reg. v. Prosonno Chunder Gossami, 22 S. W. R. Cr. R. 36.

Section 33 of the Evidence Act (I of 1872) does not justify a Magistrate, in proceedings under section 491 of the Code of Criminal Procedure, (Act X of 1872) in using evidence taken in a previous criminal trial in supercession of evidence given in the presence of the accused.

Reg. v. Hurdeep Sahoy, 23 S. W. R. Cr. R. 27.

Factory books cannot be used as independent primary evidence of the payment to which the entries refer;—Act I of 1872 section 34.

Reg. v. Ram Dutt Chowdhry, 23 S. W. R. Cr. R. 35.

The statement of a police officer who goes about from place to place and collects information from different persons, which he afterwards put in second-hand before the Court, cannot be received as evidence under the Evidence Act, I of 1872, section 32, clause 8. The meaning of that clause is that, when a number of persons assemble together to give vent to one common statement, which statement expresses the feelings

or impressions made in their mind at the time of making it, that statement may be repeated by the witnesses, and is evidence.

In forming a jury, a Sessions Judge should endeavour to seek for persons of an independent condition in life, men of judgment and of experience.

Reg. v. Dina Bundhoo Roy, 24 S. W. R. Cr. R. 4.

In a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence, the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. Held, that the Assistant Magistrate ought not to have admitted this evidence.

Reg. v. Majohur Roy, 24 S. W. R. Cr. R. 11.

A Court of Session is not at liberty under Act X of 1872, section 249, to ground its judgment on the depositions taken by the Magistrate without taking the examination of the witnesses afresh.

Sreeputtee Churn Sircar, 24 S. W. R. Cr. R. 14.

The High Court quashed a conviction based not upon the evidence which the Deputy Magistrate recorded, but upon unrecorded evidence taken subsequently on the spot, for it was impossible for the latter evidence to be seen in appeal.

Reg. v. Luckhy Narain Nagory, 24 S. W. R. Cr. R. 18.

Where the Sessions Judge did not allow a police inspector to be examined for the defence, and the accused was thereby prejudiced; and where evidence taken by the Deputy Magistrate was admitted without the prisoner having an opportunity of examining an admittedly important witness, the High Court quashed the conviction and ordered a new trial.

Reg. v. Bhoobun Mohun Dey, 24 S. W. R. r. R. 50.

The circumstance that the evidence of the Civil Surgeon given in English was not interpreted to the accused, was held to be of small importance, where it was understood by the prisoner's Counsel, and all necessary questions were put to the witness.

Reg. v. Russick Dass & others, 24 S. W. R. Cr. R. 76.

An accused person cannot be lawfully convicted upon evidence not recorded in his presence.

Kristodhone Dutt v. Chairman of the Municipal Commissioners of theSuburbs of Calcutta, 25 S. W. R. Cr. R. 6.

Under Act X of 1872, section 228, Magistrates are not bound to record the substance of every separate deposition, but to state generally what is the substance of the witnesses' evidence.

Noor Mahomed & others, petitioners, 25 S. W. R. Cr. R. 31.

Where a Magistrate was dissatisfied with the opinion expressed by a Deputy Magistrate on the evidence before him, and remanded the case for fresh evidence on one particular point only, the Magistrate acted illegally, and made all his subsequent proceedings illegal also.

Reg. v. Amir Khan & others, 9 B. L. R. 36; S. C. 17 S. W. R. Cr. R. 15.

Letters &c. found in a man's house after his arrest, are admissible in evidence, if their previous existence has been proved.

(COUCH, C. J.) :—" It was objected as to these letters by the learned Counsel for Amir Khan that, Kazi Mian Jan had been previously arrested, and that letters found in his house, subsequent to his arrest and whilst he was in custody, could not be used as evidence. But that rule of evidence is subject to this exception that, if the previous existence of the letters found is established, either by direct proof, or by strong presumptive evidence, the objection that they were found after the arrest of the party in whose house they were found, cannot prevail. The reason for not allowing them to be received in evidence would not apply in such a case; that reason being, that it is necessary to guard against the possibility of persons, after a man has been arrested and is in custody, placing in his house, papers which might be used to criminate him. But if the evidence shows that the papers were in existence before the arrest, then the papers may be used in evidence."

Reg. v. Tarinicharan Dey & others, 9 B. L. R. App. 42.

The prisoner, Tarinicharan, was charged with forging for the purpose of cheating, and using as genuine a forged railway receipt or bill of lading, for the purpose of obtaining from the East Indian Railway Company certain goods which had been entrusted to the Company to be carried from Delhi to Calcutta. The *Standing Counsel* for the prosecution sought to prove the delivery of the goods to the Railway Company by putting in a letter from the consignor at Delhi to his partner in Calcutta, advising the despatch of the goods. He submitted that the letter was a " document used in commerce, written or signed " by a person " whose attendance could not be procured without an amount of delay and expense which, under the circumstances of the case would be unreasonable," and therefore that it was relevant under section 32, clause 2, of the Indian Evidence Act (I of 1872). The Court refused to receive the evidence, and intimated a doubt whether such a letter would, under any circumstances, be receivable since it was beyond the instances specified in the section.

Reg. v. Amanulla, 12 B. L. R. App. 15; S. C. 21 S. W. R. Cr. R. 49.

Upon the trial of the prisoner for the murder of his wife and infant child, the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate. The Sessions Judge purporting to act under section 249 of Act X of 1872, discarded the evidence taken before himself, and grounded his judgment on the evidence given before the Magistrate, and upon this evidence he convicted the prisoner and sentenced him to death. The prisoner appealed to the High Court.

PHEAR, J. (after reading section 249 of the Criminal Procedure Code) continues, " It appears to me that the Legislature in framing this enact-

ment desired merely to authorize the Court to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent therewith was made by the witness before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief:—not that the Court should discard wholly the testimony of witnesses given before it, and have recourse to the testimony of the same persons which was given elsewhere before another judicial officer on the occasion of making the investigation preliminary to the final trial. The discretion which is conferred by the passage "if the Court thinks fit" in section 249 is to be exercised upon substantial materials rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not, as was the case here, upon mere speculation or conjecture. I think therefore, that the prisoner ought not to have been convicted, and that the sentence of the Sessions Court should be set aside and the prisoner discharged.

MORRIS, J..... It seems to me that, under section 249 of the Criminal Procedure Code, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, when there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is to a certain extent corroborated by independent testimony before himself. In the present instance there is nothing of this kind. There is really no one such substantive fact conclusively proved as can enable the Judge to say with confidence that the evidence given before the Magistrate was true as opposed to what was said before himself. Nor can it be said that the police officer or any other witness before the Court of Session affords independent testimony corroborative of the evidence given before the Magistrate..... I therefore concur in ordering the discharge of the prisoner.

Reg. v. Sewa Bhogta, 14 B. L. R. F. B. 294; S. C. 23 S. W. R. Cr. R. 12.

The word "omission" in section 13 of Act X of 1873 (Oaths Act) includes any omission and is not limited to accidental or negligent omissions. JACKSON, J. dissented.

Reg. v. Anunto Chuckerbutty & others, 14 B. L. R. 295 note; S. C. 22 S. W. R. Cr. R. 1.

Section 13 of Act X of 1873 (Oaths Act) does not render the evidence of a child of nine years of age inadmissible, if the evidence has been advisedly, and not by an omission recorded without any oath or affirmation.

Reg. v. Mussamut Itwarya, 14 B. L. R. Ap. Cr. 54; S. C. 22 S. W. R. Cr. R. 14.

The accused was charged with throwing B and C. down a well, She was charged with the murder of B. under section 302 of the Penal Code, and on that charge she was tried and acquitted. Thereupon the Joint-Magistrate, without holding any further preliminary enquiry, committed her on a charge under section 307 of

attempting to murder C. The only eye-witness of the offence, according to the Sessions Judge, was a child, and as she did not understand the nature of an oath or solemn affirmation, her evidence was taken on simple affirmation. The jury found the prisoner guilty, and she was sentenced to ten years' transportation. Held, that the omission to administer either an oath or solemn affirmation, although knowingly made, did not render the child's evidence inadmissible. Held, also that the omission by the Joint-Magistrate to hold a preliminary enquiry on the charge under section 307 being an irregularity which prejudiced the prisoner in her defence, the proceedings should be quashed, and a new trial held.

Shibo Prosad Panda in re, 4 I. L. R. Calc. 124; S. C. 3 C. L. R. 122.

In all criminal cases tried in the Mofussil, it is incumbent on the accused, since the passing of the Evidence Act (I of 1872) to prove the existence (if any) of circumstances which bring the offence charged, within the general or special exceptions or provisoes contained in any part of the Penal Code or in any law defining such offence. *Quœre*, as to the state of the law in this respect in the Presidency Towns.

Empress v. Dabee Pershad, 6 I. L. R. Calc. 532.

The evidence of a witness taken upon commission is not admissible in a criminal trial held before the High Court, unless it can be shown that such evidence was so taken upon an order made by that Court under section 76 of Act X of 1875, or unless it is admissible under section 33 of the Evidence Act.

Gogun Chunder Ghose v. The Empress, I. L. R. Calc. 247; S. C. 7 C. L. R. 74.

In suit by A. against the obligors of a bond, the Court held, for the reasons stated in its judgment, that the signatures of the obligors were not genuine, and directed the prosecution of A. on a charge of forgery. On the trial of A. before a jury, the judgment of the Civil Court was put in evidence on behalf of the prosecution, and its contents commented on by the Sessions Judge in his charge to the jury. Held, that this judgment had been illegally admitted.

Empress v. Vyapoory Moodeliar, 6 I. L. R. Calc. 655; S. C. 8 C. L. R. 197.

The accused was charged with having received illegal gratification from C. and Co. on three specific occasions in 1876. In 1876, 1877, and 1878 C. and Co. were doing business as Commissariat contractors, and the accused was the manager of the Commissariat office. Held, that evidence of similar but unconnected instances of receiving illegal gratifications from C. and Co. in 1877 and 1878, was not admissible against him under sections 5 to 13 of the Evidence Act.

Held *per* GARTH, C. J. (MACLEAN, J. concurring) the evidence was not admissible under section 14.

Per GARTH, C. J. :—Section 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts and not upon the state of a man's mind or feeling.

Per MITTER, J. :—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and it were necessary to ascertain whether the accused received them as a motive for showing favor in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under section 14, but they would not be relevant to establish the fact of payments in 1876.

Empress v. Rochia Mohato, 7 I. L. R. Calc. 42; S. C. 8 C. L. R. 273.

In the proceedings before a Magistrate on a charge of causing grievous hurt, two (among other) witnesses one of whom was the person assaulted, were examined on behalf of the prosecution. The prisoners were committed for trial. Subsequently the person assaulted died, in consequence of the injuries inflicted on him. At the trial before the Sessions Judge, charges of murder and of culpable homicide not amounting to murder were added to the charge of grievous hurt. The deposition of the deceased witness was put in and read at the Sessions trial. Held, that the evidence was admissible either under section 32, clause 1 or section 33 of the Evidence Act, notwithstanding the additional charges before the Sessions Court. The question whether the proviso to section 33 of the Evidence Act, is applicable, that is, whether the questions at issue are substantially the same, depends upon whether the same evidence is applicable, although different consequences may follow from the same act. At the trial it was proved that the other witness who had been examined before the Magistrate had disappeared, and that it had been found impossible to serve him with a summons. His deposition was put in and read. Held, that it was properly admitted under section 33.

In summing up the case to the jury, the Judge omitted to call their attention to the evidence of the witnesses for the defence. This evidence appeared to the High Court to be untrustworthy. Held, that the summing up was not defective on account of this omission on the part of the Judge.

Empress v. Jhubboo Mahton & others, 8 I. L. R. Calc. 739, S. C. 12 C. L. R. 233.

Per FIELD, J. :—The grounds upon which the opposite party is permitted to inspect a writing, and to refresh the memory of a witness, are threefold: (1) to secure the full benefit of the witness's recollection as to the whole of the facts; (2) to check the use of improper documents; (3) to compare his oral testimony with his written statement.

Per FIELD, J. :—The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question; but if he then neglects to exercise his right, he cannot continue to retain the right throughout the whole of the subsequent examination of the witness.

Per FIELD, J. :—Under the provisions of section 323 of the Code of Criminal Procedure (Act X of 1872) the examination of a medical witness taken and duly attested may be given in evidence in any criminal trial; but in order that such evidence may be admissible against any individual accused person, the examination must have been taken in the presence of the accused.

Empress v. Kalichurn Chunari & others, 8 I. L. R. Calc. 154.

A prisoner on his trial is not entitled to insist that a memorandum made by a police officer under the provisions of section 119 of the Code of Criminal Procedure (Act X of 1872) shall, in the course of the examination of such officer, be referred to by the latter for the purpose of refreshing his memory. Reg. *v.* Uttamchand Kapurchand (11 Bom. Rep. 120) distinguished.

WILSON, J. :—" I entirely agree, if I may say so, with what was decided by the Bombay Court in the case cited before us. What was decided in that case was this, that where a witness comes forward at a trial and makes a statement contradicting his statement previously made to the police, the accused or his pleader is entitled to cross-examine him with respect to his former statement; that if he denies it, he may be contradicted, and that one of the ways in which he may be contradicted is by calling the police officer before whom he made the statement, who may refresh his memory from his diary. That seems to me to be the whole of the decision of the Bombay Court. But the question now before us is not, whether the witness can be cross-examined as to his previous statement, nor whether the police officer may be examined to contradict him, nor whether the police officer may refer to his diary; but the question is, whether the prisoner has a right to insist that the diary, if not in Court, shall be sent for, or if it be in Court shall be referred to for the purpose of refreshing the police officer's memory. I think the prisoner has no such right. I know of no authority for saying that a witness can be compelled to refresh his memory from any document; unless the document is either in the possession of the party who desires to put it to the witness, or is at least such as he can insist on having produced.

" This is a document which the law expressly declares that the defence has no right to see, section 126 (Act X of 1872) says; any 'criminal Court may send for the police diaries of a case under enquiry or trial in such Court, and may use such diaries to aid it in such enquiry or trial.' That is the right of the Court. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them, merely because they are referred to by the Court. But if they are used by the police officer who, made them, to refresh his memory, or if the Court uses them for the purposes of contradicting such police officer in either of these two cases the prisoner is entitled to see them; but until this is done he has no such right."

Pyarilall & another, Appellants in re, 4 C. L. R. 504.

The words " incapable of giving evidence " in section 33 of the Evidence Act, I of 1872, denote an incapacity of a permanent, not of a temporary kind; and where a witness is proved to be incapable of giving evidence, the Court has no discretion as to admitting his deposition. But where the absence of a witness is casual, or due to a temporary cause, the Court has such a discretion if his presence cannot be obtained without an amount of delay or expense, which under the circumstances, the Court considers unreasonable."

David, A. petitioner, in re, 5 C. L. R. 574.

Where two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other.

Dhani Mundul & others, Appellants, in re, 6 C. L. R. 53.

A. B. and C. having been charged with murder before a Magistrate, two vakeels presented their vakalutnamahs, and applied to be allowed to conduct the defence of the accused. The Magistrate refused permission, and after recording the depositions of the witnesses, committed the accused to take their trial before the Sessions Court. In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who on being examined in the Sessions Court, denied all knowledge of the facts to which they had deposed before the Magistrate. Two of them denied having made the statements recorded, while the third admitted the statements attributed to him, but asserted they were false and made under pressure. The Sessions Judge, disbelieving the statements made in his Court, thereupon under section 249 of the Code of Criminal Procedure (Act X of 1872) (as amended by section 20 of the Amending Act) used the previous depositions as evidence in the case, and mainly upon these convicted the accused of murder and sentenced them to transportation for life. Against this conviction and sentence the prisoners appealed to the High Court, on the ground that the previous depositions ought not to have been used as evidence in the case, as the Magistrate had refused to allow their pleaders to appear and cross-examine the witnesses who made the depositions. The High Court affirmed the conviction and sentence.

Empress v. Blechynden, 6 C. L. L. 278.

Where the accused was charged with culpable homicide not amounting to murder, the question was whether the deceased had died from the effects of a beating. Held, that a statement by the deceased that he had been beaten by the accused was admissible in evidence under section 32 of the Evidence Act, without proof that at the time of making the statement the deceased was conscious of any fatal effect of such beating.

Empress v. Haranchunder Mitter and others, 6 C. L. R. 390.

In a trial before a Sessions Court, the attention of the jury may be called to the discrepancies between the evidence given by witnesses in such Court, and that given before the committing Magistrate, without the depositions before the Magistrate being put in.

Juggunlall, Appellant in re, 7 C. L. R. 356.

Section 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact" does not make the public book evidence to show that a particular entry has not been made in it.

Okhoykumar in re, 7 C. L. R. 393.

Section 339 of Act X of 1872, being for the protection of witnesses only, the fact that witnesses did not understand their depositions when read over, although they may not have required them at the time to be interpreted, affords no ground for an application by the accused to set aside a conviction.

Empress v. Mulu, 2 I. L. R. All. 646.

Held, that it is only in extreme cases of delay or expense, that the personal attendance of a witness before the Court of Session should be dispensed with, and the evidence given by him before the committing Magistrate referred to.

Empress v. Chidda Khan, 3 I. L. R. All. 573.

A Sessions Judge, finding in the course of a trial, as regards the examination of the accused person taken by the committing Subordinate Magistrate, that the provisions of section 346 of Act X of 1872 had not been fully complied with, summoned the committing Magistrate and took his evidence that the accused person duly made the statement recorded. The Magistrate of the District objected to this proceeding of the Sessions Judge, contending that it was "contrary to law." The Sessions Judge referred the question whether or not his proceeding was contrary to law to the High Court.

Per STUART, C. J., PEARSON, J., OLDFIELD, J., STRAIGHT, J.:—That the privilege given by section 121 of Act I of 1872 is the privilege of the witness, *i. e.*, of the Judge or Magistrate of whom the question is asked: if he waives such privilege or does not object to answer such question, it does not lie in the mouth of any other person to assert the privilege; the reference, the objection not having been taken by the Subordinate Magistrate but by the Magistrate of the District, should be answered accordingly.

Per SPANKIE, J.:—That a Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate.

Reg. v. Lalla Chowbey, 2 N. W. P. Rep. All. 49.

Where witnesses are not examined in the presence of the accused, the conviction will be quashed.

Reg. v. Kalundar Das 2 N. W. P. Rep All. 100.

Upon trial of a prisoner it is illegal to read over to witnesses their depositions taken at a former trial, and ask them if they are true. Such witnesses will be held not to have been duly examined, and a conviction founded on their evidence will be quashed.

Reg. v. Gopal Doss & another, 3 I. L. R. Mad. 271.

In a Small Cause suit under chapter XXXIX of the Code of Civil Procedure on a promissory note, which was alleged to have been executed jointly by G. and his son V. V. filed an affidavit in order to obtain leave to defend the suit, and, having obtained leave to defend, gave evidence at the trial on his own behalf.

On a subsequent trial of V. for forgery of his father's signature to the same promissory note, the affidavit and deposition of V, in the Small Cause Court suit were admitted as evidence against V. Held, by TURNER, C. J. INNES and KINDERSLEY, JJ. that both the affidavit and the deposition were properly admitted.

By KERNAN and MUTTASAMI AYYAR, JJ. that the affidavit was properly admitted, but not the deposition.

Per TURNER, C. J., INNES and KINDERSLEY, JJ. :—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement, if relevant, may be used against him on his trial on a criminal charge.

If a witness does not desire to have his answers used against him on a subsequent criminal charge, he must object to answer, although he may know before hand that such objection, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned, and must be overruled.

Rami Reddi & Seshu Reddi in re, 3 I. L. R. Mad. 48.

The evidence of a witness given in a proceeding pronounced to be *coram non judice* cannot be used under section 33 of the Indian Evidence Act, if the witness is dead, on a retrial before a competent Court. R. charged A. with breach of trust, and S. gave evidence in support of the charge. A. being acquitted, R. was tried for making a false charge and S. for perjury. Held, (1) that the depositions given by witnesses in the first case could be used against R. in the second case, but not against S. under section 33, Evidence Act. (2) That the word "questions" in section 33 does not mean "all the questions," and that though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R.

Reg. v. Hanmanta & others, 1 I. L. R. Bom. 610.

Account-books containing entries not made by, nor at the dictation of a person who had a personal knowledge of the truth of the facts stated, if regularly kept in the course of business, are admissible as evidence under section 34 of the Indian Evidence Act, I of 1872, and *semble* under section 32, clause 2.

Account-books, though proved not to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm.

MELVILL, J. :—In this case fourteen persons were tried in the Sessions Court of Thana for being concerned in the fraudulent cutting and removal of wood from the Government forests in Alibagh..... . . . . The evidence against the principal respondents consists mainly of (1) the accounts of their broker, one Ladak Haji of Bombay, to whom all the wood was consigned for sale, (2) the genuine accounts of the firm, kept at the different depôts in Alibagh; and (3) the forged books, which it was intended to substitute for the genuine accounts. The first two set of accounts have been rejected by the Sessions Judge, on the ground that they are not shown to have been regularly kept in the course of business. The admissibility or otherwise of these books is the most important question in the case, for the Advocate General admitted at the outset that, if these books were rejected, he could not support his appeal. The system on which the broker's books were kept, is thus described :—

When any wood received from Alibagh was to be sold, a servant of the broker, named Khemji, went to the bunder and made a memorandum of the quantity weighed and sold. He states that he did not necessarily see the weighing, but that the quantity of wood was certified to him by the weigher, by an agent of the contractor, and by the purchaser. The memorandum so made was taken by Khemji, in the evening to the broker's shop, and an entry was then made in the broker's accounts by his clerk Amulak. The objection taken to the accounts by the Sessions Judge is that the entries in them were not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated. The English rule of evidence, of which the case of Brain *v.* Preece (11 M. and W. 773) is the best illustration, is briefly and clearly, stated in Mr. Fitzjames Stephen's Digest of the Law of Evidence. "A declaration, is relevant when it was made by the declarant in the ordinary course of business, or in the discharge of professional duty, at or near the time when the matter stated, occurred, and of his own knowledge." We concur with the Sessions Judge in thinking that this rule would exclude such accounts as those of the broker Ladak Haji. But the Indian rule of evidence (evidence Act, section 32, clause 2, and section 34) simply requires that entries in accounts should, in order to be relevant, be regularly kept in the course of business: and although it may be no doubt important to show that the person making or dictating the entries had, or had not, a personal knowledge of the facts stated, this is a question which, according to the Indian rule of evidence, affects the value, not the admissibility of the entries. In the present instance, it appears to us that Ladak Haji's accounts were regularly kept, in the course of business. When a clerk sitting in a Bombay office keeps accounts of transactions effected at the bunders or the Cotton Green, he must necessarily make the entries, not of his personal knowledge, but from information supplied to him by some other person. The rule adopted by the Sessions Judge woul exclude the accounts of half the merchants in Bombay. We have no doub that Ladak Haji's accounts are admissible in evidence."

The second set of accounts, *viz.*, those purporting to have been kept on behalf of the contractor of the different depôts has been rejected by the Sessions Judge for the same reason, as not being proved to have been regularly kept in the course of business. This might be a good reason for rejecting the accounts, if offered in evidence against any person other than the contractor, or his partners. But, as against the contractor or his partners, the accounts, if proved to have been kept by a servant or agent of the firm appointed for that purpose, are clearly relevant as admissions (Evidence Act, sections 17, 18 and 21). It is, of course, open to the contractor or any of his partners to show that the entries have been made after such a fashion that no reliance can be placed upon them; but, if made by a clerk of the firm, they are certainly relevant."

Empress v. Dossaji Gulam Hussein, 3 I. L. R. Bom. 334.

A prisoner accused of having committed murder at Zanzibar was sent by the British Consul there for trial before the High Court at Bombay. The Consul could not enforce the attendance of witnesses at Bombay, but he transmitted to the High Court the depositions which he

had taken in the course of the inquiry he had held with regard to the commission of the alleged offence. In the absence of the witnesses these depositions were tendered in evidence at trial at Bombay. Held, that the British Counsel at Zanzibar was authorized to take the depositions, and that they were admissible in evidence at the trial, under section 33 of the Indian Evidence Act (I of 1872).

Reg. v. Bhaishankar Narbheram, 6 Bom. Rep. Crown Cases, 75.

Reg. XII of 1827, section 52, having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence.

Reg. v. Kadir valad Balu, 7 Bom. Rep. Crown Cases, 50.

The evidence of a wife is admissible against her husband in a criminal case in the mofussil. Reg. *v.* Khyroollah, (6 S. W. Rep. Cr. R. 21) followed.

Reg. v. Pestangi Dinsha & another, 10 Bom. Rep. 75.

The statement of a Judge, who presides at a criminal trial, is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of by-standers, or of jurors nor the notes of Counsel or of shorthand writers are admissible to controvert the statement of the Judge. It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court, and such discretion will not be reviewed by the High Court sitting as a Court of review, under clause 26 of the Letters Patent.

Reg. v. Amrita Gobinda, 10 Bom. Rep. 497.

If, in a case tried by a jury, the High Court finds that inadmissible evidence has been received, but that, after setting it aside, there is other evidence on the record on which the jury may find a verdict of guilty, the High Court may reverse the conviction and sentence, and order a new trial: section 280 of the Code of Criminal Procedure (Act X of 1872).

Reg. v. Uttam Chand Kapurchand & others 11 Bom. Rep. 120.

Section 119 of the Code of Criminal Procedure (Act X of 1872) not making it obligatory upon a police officer to reduce to writing any statements made to him during an investigation, neither that section, nor section 91 of the Indian Evidence Act, renders oral evidence of such statements inadmissible. If the statements be actually reduced to writing, the writing itself cannot be treated as part of the record or used as evidence, but may be used for the purpose of refreshing memory under section 159 of the Evidence Act. Consequently, the person making the statements may properly be questioned about them: and with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statements were made, can be examined on the point under section 155 of the Evidence Act.

Reg. v. Sakharam Mukundji & 3 others, 11 Bom. Rep. 166.

The principle that parties cannot, without the leave of the Court; cross-examine a witness whom, the parties having already examined or declined to examine, the Court itself has examined, applies equally whether it is intended to direct the cross-examination to the witness's statements of facts, or to circumstances touching his credibility, for any question meant to impair his credit, tends (or is designed) to get rid of the effect of each and every answer, just as much as one that may bring out an inconsistency or contradiction, section 155 of Act I of 1872. The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time, and consequently could not have been at another place, where the latter states he was and saw the accused persons, is properly admissible in evidence, even though the witness for the prosecution may not himself have been cross-examined on the point, sections 5, 11, and 153 (Illustration C) of Act I of 1872. Where such a statement after being admitted, was withheld from the jury, the High Court ordered a new trial.

The judgment of the Court was delivered by West, J. :—The objection on the ground of the Session Judge having declined to allow one of the witnesses to be cross-examined cannot be sustained. When the Counsel for the prisoner has examined or declined to cross-examine a witness, and the Court afterwards of its own motion, examined him, the witness cannot then without the permission of the Court, be subjected to cross examination. When, after the examination of a witness by the complainant and the defendant, the Court takes him in hand, he is put under special pressure as the Judge is empowered to ask any question he pleases, in any form about any fact relevant or irrelevant (section 165, Indian Evidence Act); and he is, therefore, at the same time placed under the special protection of the Court, which may, at its discretion, allow a party to cross-examine him, but this cannot be asked for as a matter of right.

This principle applies equally whether it is intended to direct the examination to the witness's statement of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends (or is so designed) to get rid of all his answers, and of each of them just as much as one that may bring out an inconsistency or contradiction. It is then a cross-examination upon answers—upon every answer given to the Court, and is subject to the Court's control.

The next point is that the Judge misdirected the jury in telling them that the evidence of Dhondu and Jánaku, who were called by the defence to contradict the statements of Savlia and Somia, that they saw the accused at Wáhlé when the Máhárwádá was burnt, is inadmissible. The Session Judge said that the evidence of Dhondu and Jánaku that Somia and Savlia were at Dhond (the latter witnesses having said that they were at Wáhlé) was not admissible to impeach their credit, and that as Savlia and Somia were not cross-examined by the defence, as to whether they were or were not at Dhond in the afternoon of the day the fire took place, and it was possible for them to have been during the same afternoon at both places. The statements of Dhondu and Jánaku could not be considered to contradict the statements of these witnesses.

The rule of English law on this point is that the credit of a witness may, amongst other ways, be impeached by evidence of facts, contradictory of the evidence given by him. The express provision of the Indian law is less extensive. The witness's credit, it is provided, can only be impeached in certain specified ways (section 155), that is, by questions or by testimony going directly to his credit, not mediately through a contradiction of the particular matter deposed to by him in the case.

In the present instance the Session Judge seems to have been mistaken in supposing that Dhondu and Jánaku were called to impeach the credit of Savlia and Somia in the sense of the section of the Indian Evidence Act first referred to. They were called to contradict Savlia and Somia's statements. Their evidence, though not as to the fact in issue, was as to facts which in connection with other facts made the existence of a relevant fact, one immediately connected with a fact in issue highly improbable, and under sections 4 and 11 of this Act such testimony was relevant and admissible. If it is true, as Dhondu and Jánaku allege, that Savlia and Somia were at Dhond till the afternoon of the day of the fire, it is highly improble that Savlia and Somia could have left Dhond at about 11 A. M. or noon, and therefore highly improbable that the accused should have been seen by them at Wáhlé, as they assert, at about 1 P. M. The case is like that in illustration (C) to section 153 of the Indian Evidence Act, which shows that the admissibility of the testimony does not depend on the cross-examination of the witnesses to be contradicted. The evidence having thus been properly admitted, it ought not to have been withdrawn from the consideration of the jury, as it virtually was, by the Session Judge's charge. Its tendency was clearly to show that the alleged fact deposed to by Savliá and Somiá of the accused having been seen by them at a particular time and place, was not one that had really occurred, and it ought to have been allowed to have its natural weight with the jury. We must therefore order a new trial.

Reg. v. Arjun Negha & another, 11 Bom. Rep. 281.

The purpose of section 249 of the Code of Criminal Procedure (Act X of 1872), as amended by section 20 of Act XI of 1874 is to make depositions given before Magistrates in the preliminary inquiry, evidence in the trial before the Court of Session, only when the Session Judge determines, in the exercise of his discretion, that they are to be used in this way. But the exercise of this discretion, considering it as a matter of fact or law, is open to review by the Appellate Court.

Reg. v. Richardson, 2 Foster & Finlason's Reports, 343.

The prisoner was first indicted for forgery and acquitted. He was then put upon his trial for embezzlement. The indictment contained three charges of embezzlement within six months, and, in opening the case for the prosecution, the evidence of embezzlement in these three cases was stated to be as follows:—That the prisoner, being in the position and conducting the business of Messrs. Harrison, it was his business to pay the labourer's wages, and make certain other payments, and to make out weekly accounts of all such payments, by entering them in a book and adding them up at the end of each week.

On the 23rd March 1860, the prisoner's book showed a number of payments as having been made during the preceding week. All these payments had in fact been made and correctly entered, but the casting up, instead of showing a total of £20 12*s.* 6*d.* the real amount, showed a total of £22 12*s.* 8*d.* for which sum the prisoner, in accounting with his master, took credit. In another week there was a precisely similar error of the same amount, for which the prisoner also took credit; and the same in a third week. These three cases were those on which the three charges of embezzlement contained in the indictment were founded.

O'Malley said that, anticipating that a defence would be set up that these errors were the result of accident, he should show a series of similar errors both before and after those which formed the subject of the present charges.

Power, for the prisoner, objected that this evidence was inadmissible, and that it ought not to be opened.

His Lordship said that as at present advised, he thought it admissible; and, if necessary, the question could be discussed when the evidence was tendered.

Evidence having been given in support of the three charges, mainly in accordance with the above statement, it was then proposed by the prosecution to prove the series of erroneous castings as above.

Power and Naylor, for the prisoner, argued that this could not be done. They contended that the general rule of law was, that the evidence must be confined to the point in issue; and the rule was founded on the principle that a man was not called upon to be prepared to explain any other transactions than those which were the subject of inquiry. This rule was always strictly applied in criminal cases, the only exceptions being those of a recognized kind, namely, on indictments for conspiracy, for uttering, or for receiving stolen goods. If this evidence were admissible in all cases, those cases would not have been treated as exceptional, and the whole doctrine of election was based on the supposition that some such rule as that contended for exists. Similar evidence was very recently held inadmissible on an indictment for obtaining money by false pretence; Reg. *v.* Holt (9 W. R. 74) in which case it was tendered for the same purpose as here, namely, for the purpose of showing what the intention of the prisoner really was.

Williams, J.:—I am clearly of opinion that this evidence is admissible. There is no principle of law which prevents that being put in evidence, which might otherwise be so, merely because it discloses other indictable offences; Reg. *v.* Clewes (4 C. and P. 221). Now it is clear that on this indictment the defence must be that these are mere errors in the castings; and such defence naturally arising, any lawful means may be resorted to whereby such defence may be anticipated, and proved to be ill-founded; and evidence which is admissible for such a purpose is not the less so because it tends to prove the commission of other felonies by the prisoner. To hold that this evidence is admissible, is in accordance with the principle laid down in numerous cases, that to explain motives or intention evidence is admissible, although it does not otherwise bear upon the issue to be tried.

This principle was recognized in R. *v.* Oddy (2 Den C. C. 264) before the Court of Criminal Appeal, and also in a case which excited a great deal of interest at the time, that of R. *v.* Geering, a report of which will be found in 18 L. J. M. C. 215. There the prisoner was being tried for the murder of her husband by means of arsenic, and evidence was tendered that two other members of the prisoner's family had died by similar means, the object being to rebut the suggestion that the death which was the subject of inquiry was the result of an accident. The present Lord Chief Baron, with the concurrence of ALDERSON, B. and TALFOURD, J. admitted the evidence. This appears to me to be a similar case, and I think the evidence is admissible. I may add that, anticipating that this point would arise, I consulted the Chief Baron upon it, and he agreed with me in this view. (His Lordship refused to reserve the point.) It was then shown by the production of the prisoner's books that there was a series of similar erroneous castings during a period extending from the 10th December 1858, to the 24th August 1860, and that in all these cases the prisoner had taken credit with his employers for the larger sum. The prisoner was convicted. See Section 15 of the Evidence Act (I of 1872) illustration b.

Reg. v. Gallagher, 12 Crim. Law Cases, April 24th, 1875, p. 62.

Two prisoners were jointly charged in an indictment with obtaining money by conspiracy and false pretences. On being arraigned, one pleaded guilty and the other not guilty. On the trial of the indictment, the prisoner who had pleaded guilty was admitted as a witness against the other prisoner, although it was objected, that the evidence of a co-conspirator could not be received on the count for conspiracy. The jury found the prisoner not guilty on the count for conspiracy, but guilty on the counts for false pretences. Held, that the co-conspirator was admissible as a witness, and that the conviction was right.

Reg. v. Payne, 1 Law Rep. Crown Cases reserved, 1872.

When two prisoners are indicted and tried together, one is not a competent witness for the other.

Reg. v. Proud L. & C. 97; 31 L. J. M. C. 71.

Where the master's books kept by the prisoner, were given generally in evidence by the prosecution though it was objected, on behalf of the prisoner, that the evidence must be confined to the three particular entries referring to the 3 charges in the indictment, and the prisoner having been convicted, the conviction was affirmed.

Reg. v. Allen, 10 Cox C. C. 405.

To prove that a ship is a British ship, it is not necessary to produce the register or a copy thereof; it is sufficient to show orally that she belongs to British owners, and carries the British flag.

Oral testimony as to the position of a ship at a given time, is better evidence than the production of the log-book.

Reg. v. Biswambhar Das, 6 B. L. R. App. 122; S. C. 15 S. W. R. Cr.R. 49.

Report of Chemical Examiner—Criminal Procedure (Act XXV of 1861), section 370.

PAUL, J.:—.....Under section 370 of Act XXV of 1861 a report from the Chemical Examiner is evidence in a criminal trial, if it

bear the signature of the examiner; and according to this section, the original report, bearing the signature of the examiner should be put in evidence. On the present occasion we observe that a copy of the report has been sent up by the Magistrate; this is wholly irregular. In future, care should be taken that the original report be submitted.

Reg. v. Bykunt Nath Banerjee, 10 S. W. R. Cr. R. 17.

The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does.

Reg. v. Chirag Ali, 12 S. W. R. Cr. R. 5.

The unsupported evidence of an approver (especially if in itself unsatisfactory) is not sufficient to support a conviction.

Reg. v. Dwarka, 5 S. W. R. Cr. R. 18, S. C. 1 Ind. Jur. N. S. 100.

The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one.

Reg. v. Issen Mundle, 3 S. W. R. Cr. R. 8.

An approver's uncorroborated evidence is not sufficient as proof against other persons.

Reg. v. Issur Raut & others, 8 S. W. R. Cr. R. 63.

Where the evidence was taken down by the Magistrate in English, and no memorandum was attached to it (as required by section 199, Code of Criminal Procedure Act XXV of of 1861) stating that the evidence was read over to the witness in a language which he understood, it was held that there had been an error in law by which the accused was materially prejudiced.

Reg. v. Kallachand Doss, 11 S. W. R. Cr. R. 21.

Rule as to corroboration of the evidence of approvers laid down generally, and in a case where the charge is one of belonging to a gang of dacoits under section 400 of the Penal Code.

Reg. v. Nujum Ali, 6 S. W. R. Cr. R. 41.

When a Civil Court authorizing a criminal prosecution in cases of offences against public justice, instead of completing the investigation itself, and committing the parties for trial before the Court of Session, simply refers the proceedings and leaves it to the Magistrate to commit or not, as he thinks proper, the depositions taken before the Civil Court are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under section 369, Code of Criminal Procedure (Act XXV of 1861). But by section 57, Act II of 1855 the improper admission of such evidence is not of itself ground for the reversal of the Sessions Judge's sentence,

when independently of that evidence, there is sufficient evidence to justify the decision. (See now section 167 of the Evidence Act, I of 1872.)

Reg. v. Nunhoo & others, 9 S. W. R. Cr. R. 28.

A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a wituess after a pardon was granted to him.

Reg. v. Permanund Barik, 11 S. W. R. Cr. Cr. R. 13.

The notes of an enquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion.

Reg. v. Radhay Dharee, 1 S. W. R. Cr. R. 14.

The former deposition of a witness should not be read until after his examination in Court.

Reg. v. Rajkrishna Bitter, 1 B. L. R. O. C. 37.

The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. Held, that the depositions were illegally taken, and therefore could not sustain a charge.

NORMAN, J. :—" The evils of such a mode of taking evidence are shewn in the case of the Attorney General of New South Wales *v.* Bertrand, 1 L. R. (P. C.) 520. It was then objected that this mode of taking evidence deprived the jury of the opportunity of observing the demeanour of witnesses. The objection in this case is analogous though not similar. The witnesses against Gopal Ghose stated what they supposed to be true, but the prisoner was not present to cross-examine them or elicit anything that might be in his favour. It is like evidence elicited by leading questions. Asking the witnesses, " If this is what they said on a former occasion, and whether what they said is true " is the worst form of leading question. It is giving a value to it which it cannot have, if taken afresh. It appears to me that this mode of taking the evidence is entirely erroneous, and that the Magistrate ought not to have taken it or to have committed the prisoner. A note must be made that the charge is not sustainable."

The prisoner was thereupon taken before the Magistrate, and the depositions taken afresh.

Reg. v. Ramrutton Doss, 9 S. W. R. Cr. R. 23.

When a prisoner is found to be insane at the time of his trial, the procedure applicable to his case is that prescribed by sections 391 and 392 of the Criminal Procedure Code (Act XXV of 1861.)

A mere written certificate of a medical officer that prisoner is of unsound mind, and incapable of making his defence, is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness, and be personally and carefully examined.

Reg. v. Reaj Ali alias Dulloo Khan, 6 S. W. R. Cr. R. 77.

The evidence of persons who are themselves liable to punishment should be carefully sifted and tested, before they can be relied on in a Court of law.

Reg. v. Rezza Hossein & others, 8 S. W. R. Cr. R. 55.

The certificate required under section 205, Code of Criminal Procedure (Act XXV of 1861) need not be in the handwriting of the presiding officer, but may be under his hand only, *i. e.*, signed by him. Where a jury is satisfied as to the genuineness of an attestation by a Magistrate, it is unnecessary to call the Magistrate to swear to his signature.

Reg. v. Shamkissore Halder, 13 S. W. R. Cr. R. 36.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, where the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence in allusion to the evidence of the witness, the High Court refused to set aside the conviction, havin regard to section 439 of the Code of Criminal Procedure (Act XXV 1861).

Reg. v. Sheikh Edoo, 2 S. W. R. Cr. R. 47.

Case quashed as decided contrary to law on the unsupported statemen of prosecutor and prisoner, without recording th evidence offered on either side.

Reg. v. Sookmoy Ghose, 10 S. W. R. Cr. R. 23.

The evidence of a prisoner taken by a Collector, cannot be used againy him on his trial before a Magistrate.

Reg. v. Sorob Roy, 5 S. W. R. Cr. R. 28.

The guilt of a prisoner must be clearly proved before he can be convicted, and a weak case cannot be strengthened by the fact that the police have had many difficulties thrown in their way. Absconding is a very small item in the evidence of guilt. Usually convictions must be based on substantial and sufficient evidence, and not merely on "moral convictions."

Reg. v. Suneechur, 5 S. W. R. Cr. R. 1.

The statement of a prisoner before a Magistrate, when taken as a confession or an examination, may be received as evidence.

Reg. v. Thakoor Chund Surma, 13 S. W. R. Cr. R. 22.

Under section 154, Code of Criminal Procedure (Act XXV of 1861) police diaries cannot be admitted as corroborative evidence.

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Reg. v. Tulsi Dosad, 3 B. L. R. A. Cr. 66.

The uncorroborated evidence of an approver is not sufficient as proof against other persons. Reg. *v.* Issen Mundle, (3 S. W. R. Cr. R. 8.)

Tamor Sing v. Kalidas Roy, 4 B. L. R. O. Civ. 51.

In this case Mr. Evans, for the plaintiff, said that the service of process had been made in the Presidency Jail. The service had been effected by leaving a copy of the summons with the jailor, as provided by section 15 of the Prisoners Testimony Act, XV of 1869, and the jailor had endorsed it in accordance with section 16. Mr. Evans asked whether the Court required proof of the jailor's signature.

PHEAR, J. :—The Court will take judicial notice of the signature of the jailor under section 16, Act XV of 1869, the Prisoners Testimony Act.

Elahee Buksh, Appellant, 5 S. W. R. Cr. R. 80; S. C. B. L. R Sup. Vol. 459, F. B.

A conviction founded upon the uncorroborated evidence of one or more accomplices alone is valid in law. The evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require.

Sheikh Bechoo, 6 S. W. R. Cr. R. 92.

A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. A person is not, by reason of being an accomplice disqualified from giving evidence either for or against a prisoner.

Rojoni Kant Bhoomick in re, 13 S. W. R. Cr. R. 24.

There is no rule of law which prevents the admission without corroboration, of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused.

Sheikh Tenoo Case of, 15 S. W. R. Cr. R. 11.

Where a Sessions Judge sees from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration, he should call for that evidence. A Magistrate should, in all cases in which dying declarations are made, examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination.

Government of Bengal v. Kazimuddin, 18 S. W. R. Cr. R. 4.

Where although the Judge thought that the evidence of two witnesses was inadmissible against the prisoner, as being the evidence of accomplices, yet he did not think the evidence in the case legally sufficient to justify the conviction of the prisoner, the High Court declined to interfere under section 404, Code of Criminal Procedure (Act XXV of 1861) considering that the question of admissibility was a quite different matter from that of credibility.

Kedarnath Bose, petitioner, 18 S. W. R. Cr. R. 16.

The Deputy Magistrate (under the impression that the answer would be hearsay evidence) objected to the petitioner's vakeel asking a witness as to what was the first statement made by prosecutor to him immediately after the alleged occurrence. His decision with regard to petitioner was set aside, and the case sent back for a fresh decision.

Reg. v. Luchmee Pershad, 19 S. W. R. Cr. R. 43.

Although under section 133 of the Indian Evidence Act, the conviction of a prisoner on the uncorroborated testimony of an accomplice is not illegal, the Court, having reference to illustration (B), section 114 of that Act, considered in this case that the accomplice was unworthy of credit.

Reg. v. Koa & others, 19 S. W. R. Cr. R. 48.

Under section 133 of the Evidence Act, I of 1872, a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Reg. v. Udhan Bind & others, 19 S. W. R. Cr. R. 68.

Although by section 133, Act I of 1872, an accomplice is a competent witness against an accused person, and a conviction would not be illegal merely because it proceeded upon the uncorroborated testimony of an accomplice; yet it would be unsafe, where the testimony of the accomplice is not corroborated in any material point, except by the confession of a fellow-prisoner, whose testimony likewise requires corroboration, to convict the accused.

Reg. v. Ramsodoy Chuckerbutty, 20 S. W. R. Cr. R. 19.

The Court (MITTER and PONTIFEX, JJ.) (GLOVER, J. dissenting) refused to convict in this case on the uncorroborated testimony of an accomplice who had previously been convicted of the same offence on her own confession. *Per* GLOVER, J.:—In a case triable by the Sessions Court, a Magistrate has power to commit the accused to the Sessions after he has once discharged him.

Reg. v. Sadhu Mundul, 21 S. W. R. Cr. R. 69.

Held on a consideration of the Indian Evidence Act, I of 1872, section 114, that the Legislature intended to lay down as a maxim or rule of evidence, that the testimony of an accomplice is unworthy of credit, so far as it implicates an accused person, unless it is corroborated in material particulars in respect to that person, and it is the duty of a Court which has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not, and in a case tried by jury to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. A Judge should charge the jury that the mere confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence by Act I of 1872, section 30 are only to be rated as evidence of a defective character, and that they require especially careful scrutiny before they can be safely relied on.

Reg. v. Chando Chandalinee & others, 24 S. W. R. Cr. R. 55.

An accused person cannot be convicted solely upon the evidence of persons who are more or less participators in the crime of which he is accused. Where a witness admits that he was cognizant of the crime as to which he testifies, and took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice.

Empress v. Samiruddin, 8 I. L. R. Calc. 211.

The dying statement of a deceased person must be taken in the presence of the accused; if not so taken, the writing cannot be admitted to prove the statement made. The statement may be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing the witness' memory.

Devi Dutt & others in re, 7 C. L. R. 193.

A Magistrate trying a case is as much bound by strict rules of evidence as any Sessions Judge or Civil Court. Where proceedings, which had already been taken against the accused before another Magistrate, had been quashed, and a new trial directed, the Magistrate holding the second trial is not justified in referring to the former record as a whole, but only to such portions of it as have been specially put in evidence before him.

Reg. v. Ujrail & others, 3 N. W. P. Rep. All. 212.

A dying declaration is admissible in evidence in all criminal cases provided all the conditions attaching to its admission have been fulfilled, and is not confined to cases in which the death of the injured party is the sole object of inquiry. There must be some evidence of the state of the deceased person at the time of making the declaration. The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death.

Reg. v. Ramasami Padayachi & another, 1 I. L. R. Mad. 394.

Section 133 of the Indian Evidence Act, (No. 1 of 1872) in unmistakeable terms lays it down, that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. The rule in section 114 of the Indian Evidence Act coincides with the rule observed in England. Though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal.

Reg. v. Budhu Nanku, & others, 1 I. L. R. Bom. 475.

A conviction based on the testimony of approvers, uncorroborated as to the identity of the accused person, cannot be sustained; and confessions of co-prisoners, implicating him, cannot be accepted as sufficient corroboration of such testimony.

Proceedings of 20th March 1868. 4 Mad. Rep. Rul. 7.

There is no rule of law that the uncorroborated evidence of an accomplice is insufficient for a conviction. The proper form of the charge to the assessors in such cases stated.

Proceedings of 31st Oct. 1868, 4 Mad. Rep Rul. 21.

A Sessions Judge should not permit the evidence of an approver who was examined as a witness before the committing Magistrate, to be laid before the jury by whom the prisoners were tried.

Proceedings of 23rd Dec. 1870 6 Mad. Rep. Rul. 11.

The report of the Chemical Examiner to Government may be acted upon as evidence, by all Criminal Courts by virtue of section 380 A. of the amended Criminal Procedure Code.

Reg. v. Imam valad Baban Bala valad Baban & Joti bin Mahadev, 3 Bom. Rep. Crown Cases, 57.

Held, that the English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted.

See the comments on this case in Reg. *v.* Ganu, 6 Bom. Rep. Cr. Ca. 57.

Reg. v. Fattechand Vastachand et al., 5 Bom. Rep. Crown Cases, 85.

Where the Magistrate erroneously treated a witness as an accomplice, and granted him a conditional pardon. Held, that his evidence did not require corroboration.

Reg. v. Ganu bin Dharoji et al., 6 Bom. Rep. Crown Cases, 57.

Held, that where the evidence of an accomplice is uncorroborated, the correct practice requires Session Judges not merely to tell the jury that it is *unusual* to convict on such evidence, but that he should also tell them that it is *unsafe*, and contrary *both to prudence and practice to do so;* yet that his omission to state this does not amount to an error in law. Reg. *v.* Imam (3 Bom. Rep. Cr. Cases, 57) commented on.

Reg. v. Malapa Kapana & others, 11 Bom. Rep. 196.

The evidence requisite for the corroboration of the testimony of an accomplice, must proceed from independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration.

Reg. v. Fata Adaji & others, 11 Bom. Rep. 247.

The declaration of a dying person, albeit made on solemn affirmation before a Magistrate, who was not, however the committing Magistrate, and signed by him, is not admissible in evidence without legal proof that the deceased made such a declaration.

Dhirajlal Mathuradas, Government Prosecutor, for the Crown.

[WEST, J. :—What evidence is there in the case to show that the statement recorded as No. 6, as the dying declaration of the deceased, was actually made by him?] There is none such. But it may be treated as a memorandum of evidence by a witness before an officer authorized by law to take such evidence. The statement is before a Magistrate on solemn affirmation, and may be admitted without proof under section 80 of the Indian Evidence Act.

WEST, J. :—[The Magistrate was not the committing Magistrate, and the prisoners were not present, and had no opportunity of cross-examining the dying man]. Then this may be admitted under section 32, Clause I of that Act, as the statement of a deceased person, as to any of the circumstances of the transaction which led to his death. (But can you cite any authority to show that such a statement must be presumed to be genuine without evidence of its having been made by the dying person?) No.

Per Curiam :—The Government Prosecutor has not been able to produce any authority for the admission as evidence of the document recorded as No. 6, purporting to be the dying declaration of deceased Jethá without proof or solemn affirmation that the deceased actually made such a declaration. The law does not provide that the mere signature of a Magistrate shall be a sufficient authentication of such a document, and it is obviously desirable that the person who took the statement should be subject to cross-examination as to the dying man's state of mind when he made it, and as to other circumstances. We must, therefore, exclude this document in considering the evidence in the case."

Reg. v. Meetaram Mytee & another, 1 Ind. Jur. N. S. 171.

When evidence is given by an approver it is not important to consider whether a story told by the accused to him, tallies with that made to another person.

Samiruddeen, Appellant in re, 10 C. L. R. 11.

In a capital sentence case referred to the High Court, the only opinion of a surgeon as to the cause of death of the deceased, which can be judicially considered, is the opinion expressed by him under examination, as a witness. A statement made by a dying person as to the cause of death, and recorded by a Magistrate, cannot be treated as a deposition, unless made in the presence of the accused before the Magistrate exercising judicial jurisdiction, but must be proved in the ordinary way by a person who heard it made.

Kalichurn Chunari & others in re, 10 C. L. R. 51.

A prisoner has no right to insist that a police diary if not in Court shall be sent for, or if it be in Court, that it be referred to for the purpose of refreshing the memory of a police officer under examination:

Per WILSON, J.:—A witness cannot be compelled to refresh his memory from any document, unless the document is either in the possession of the party who desires to put it to the witness, or is, at least such as he can insist on having produced. Reg. *v.* Uttamchand Kapurchand, 11 Bom. Rep. 120 approved and explained.

Hatim, Appellant, 12 C. L. R. 86.

Under the provisions of the penultimate paragraph of section 57, and of the first proviso of section 60 of the Evidence Act, the Court referred to Taylor's Medical Jurisprudence with reference to the effect likely to be caused by a sudden blow on the abdomen.

Reg. v. Muttee Mushyo, S. W. R. 1864, Cr. R. 18.

A memorandum by a Judge that certain witnesses had deposed the same as the former witnesses, is not in accordance with the requirements of section 195, Code of Criminal Procedure (Act XXV of 1861.)

Proceedings of 17th Nov. 1880. Weir, 264.

Statements made in police diaries and occurrence reports, are not legal admissible in evidence. When it is desired to pr the facts stated in such diaries or reports, the writ must be examined as witnesses in due course.

Neravati Nandaiya, Appellant. Weir, 265.

Diaries kept by police officers under section 12 are not original evidence.

Proceedings of 12th Sept. 1862. Weir, 276.

The depositions of Gosha females should only be taken in cases where th ends of justice cannot be otherwise obtained. Whe requisite, the Court must be adjourned to som place where the Gosha female can come, and she must be examined behind a purdah in presence of the accused, the Judge taking such precautions as he can to secure he identity.

K. Venkatroyadu, prisoner. Weir, 353.

Where a medical officer who has given a certificate as to the cause o death of a deceased person, is subsequently examine as a witness, it is not sufficient to ask him merely to attest the accuracy of the statements made in the certificate. Such certificate being in itself no evidence, the witness should be examined directly as to the cause of death, character of the wounds, symptoms, &c.

Mantapampalla Padigadu, Appellant. Weir, 354.

In a case depending almost entirely upon medical evidence, the evidence of the Civil Surgeon before the Magistrate should not be tendered or accepted as evidence.

Sithandi Gounden, Appellant. Weir, 509.

Where a deposition was read in evidence when the attendance of the witness might have been secured by a not unreasonable delay, and the deposition so read, had only been in part recorded in the presence of the accused, further evidence was ordered to be taken.

Proceedings of 30th March, 1868. Weir, 510.

Comparison of handwriting is permissible in criminal as well as in civil cases.

Proceedings of 1st Oct. 1877. Weir, 511.

The fact of a previous conviction, is at any stage admissible as evidence to character when relevant. To determine whether it is relevant, depends upon whether the previous conviction falls within any of the classes of connection with the fact to be proved stated in sections 6 to 16.

Vythynanga Pillai & others. Weir, 513.

Hearsay.—A conviction quashed on the ground that the jury may have been influenced by evidence improperly admitted of information said to have been furnished to the police by persons who were not examined at the trial.

Proceedings of 24th Oct. 1879. Weir, 515.

Any officer having the custody of records, not being records of which the production may on special grounds, (*e. g.*, sections 123, 124, Indian Evidence Act), be refused, is bound to produce them on receiving a summons to that effect. The summons should properly be addressed to the Judge, or presiding officer of the Court.

As a matter of official courtesy, it is desirable that a summons for records, when issued by one Court to another Court, should be accompanied by a letter intimating, in all cases in which it may not be necessary to examine the Judge or presiding officer himself, that the attendance of a ministerial officer to produce the record is all that is required.

Kadir Moidin & Subramania Pillai, accused. Weir, 533.

The ruling in Reg. *v.* Gopal Doss and another (3 I. L. R, Mad. 271) followed.

Palavasam & others, Appellants. Weir, 534.

In regard to the evidence of an accomplice, the general rule of practice is, that it is considered unsafe to convict upon such testimony, unless corroborated in a material respect both as to the commission of the offence and the identity of the individual. If a Judge, aided by assessors, considers the evidence of an accomplice alone sufficient to convict a prisoner, the conviction will not be set aside on appeal, merely on the ground that that evidence is not corroborated.

Proceedings of 17th Jan. 1877. Weir, 539.

There is nothing in the Evidence Act to protect from a prosecution for defamation of a person who, without good faith or reasonable grounds, and for the sole purpose of defaming the person questioned, asks a scandalous

question. It makes no difference that the Court may have omitted to forbid the question under section 151.

Roghuni Singh v. The Empress, 9 I. L. R. Calc. 455.

In giving evidence, a police officer may refresh his memory by referring to documents in which he has, under section 119 of Act X of 1872 reduced into writing statements of persons examined by him during an investigation, but the documents themselves cannot be used as evidence, and a Judge should not read such documents to a jury in order to point out discrepancies between the evidence, and previous statements of the witnesses. The evidence of a medical man who has seen, and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death.

A medical man who has not seen the corpse, is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence, is to put to the witness hypothetically, the facts which the evidence of the other witnesses attempts to prove, and to ask the witness's opinion on those facts. Section 323 of Act X of 1872 does not in any way preclude the Judge at a Sessions trial, from calling and examining the medical wi ness who has been examined before the Magistrate, and in every case which the deposition taken by the Magistrate is essentially deficient requires further elucidation, such witness should be called and examined the Sessions Judge.

A medical man in giving evidence, may refresh his memory by referri to a report which he has made of his *post-mortem* examination, but th report itself cannot be treated as evidence, and no facts can be taken there from.

Hurry Churn Chuckerbutty v. The Empress, 10 I. L. R. Calc. 140; S. C. 13 C. L. R. 358.

A prisoner, or his Counsel, is at liberty to offer evidence or not, as he thinks proper, and no inference unfavourable to him can be drawn because he takes one course rather than another.

Surat Dhobini in re, 10 I. L. R. Calc. 302.

The only evidence against a prisoner charged with having voluntarily caused grievous hurt, was a statement made in the presence of the prisoner by the person injured to a third person, immediately after the commission of the offence. The prisoner did not, when the statement was made, deny that she had done the act complained of. Held, that the evidence was admissible under section 6 and section 8, Illustration (g) of the Evidence Act.

Empress v. Nanha Malla, 13 C. L. R. 326.

Quære:—Whether the deposition of an approver taken before the committing Magistrate, may be used in the Session Court as evidence against accomplices, the approver having retracted his former statement, and the conditional pardon having in consequence been withdrawn.

Queen-Empress v. Bepin Biswas & others, 10 I. L. R. Calc. 970.

Exact correspondence in details of several statements made by an approver in the course of a trial, is not corroborative evidence such as is ordinarily required to make it safe to convict a particular prisoner.

Kurali Prasad Misser v. Anantaram Hajra, 8 B. L. R. 490.

Where a Judge of first instance, doubted the authority of a deed, it being written on two pieces of stamped paper of different dates.—Held, under the circumstances, not to be a proper deduction. Where evidence could have been adduced, and was not, as to a handwriting being forged, and the Judge by comparison with other handwriting held it to be a forgery, such finding was disapproved of.

Reg. v. Zuhir & Julland Mollah, 10 S. W. R. Cr. R. 11.

In determining whether a declaration alleged to have been made by a deceased person, is admissible as a dying declaration under section 371, Code of Criminal Procedure (Act XXV of 1861), a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. (See now section 32, clause [illegible] of the Evidence Act.) The evidence of persons who cannot speak of their own personal knowledge to such declaration should not be admitted; and [illegible] deciding whether the accused is guilty of the charge of murdering the [illegible]ceased declarant, the Court should confine itself to enquiry into the facts [illegible]hich occurred [illegible] the day of the murder. The evidence as to the motives [illegible]ith which a prisoner commits an offence should be of the strictest kind.

Queen-Empress v. Greeschunder Banerjee, 10 I. L. R. Calc. 1024.

Though under section 34 of the Evidence Act, the actual entries in books of account regularly kept in the course of business are relevant to the extent provided by the section, such a book is not by itself relevant to raise an inference from the absence of any entry relating to a particular matter.

The fact that the accused has, during the cross-examination of the witnesses for the prosecution, used certain documents, and that such documents have been put in as evidence on his behalf does not entitle the prosecution to the right of reply, if when asked upon the close of the case for the prosecution whether he means to adduce evidence, the accused says that he does not.

Queen-Empress v. Autal Muchi, 10 I. L. R. Calc. 1026.

A document purporting to be a report under the hand of an "additional Chemical Examiner" upon a matter or thing submitted to him for analysis and report, cannot be received in evidence under section 501 of Act X of 1882.

Nobin Krishna Mookerjee v. Rassick Lall Laha, 10 I. L. R. Calc. 1047.

N. was charged with having made a false statement before a Sub-Registrar in identifying K., a person who had executed a mortgage deed in favour of R. and who was a neighbour of his (N.'s) as being the person to whom R. had agreed to advance the money, the consideration of the mortgage. The false statement

consisted in his stating to the Sub-Registrar that he "knew K. as his neighbour." During the hearing of the case it was sought to prove a statement made by R. to a third party (R. having died previous to the institution of the case) to the effect that N. had told him certain facts. A memorandum, alleged to be in the handwriting of N. was also tendered and received in evidence without any further proof as to its being in N.'s handwriting than that it bore a similarity to another piece of paper proved to bear his handwriting. Held, that the statement made by R. to the third party was inadmissible and irrelevant, and that the memorandum was wrongly received in evidence.

CONFESSION.

Reg. v. Hurribole Chunder Ghose, 1 I. R. Calc. O. Cr. 207.

The prisoner, on his arrest, made a statement in the nature of a confession which was reduced into writing by one of the Inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the Police office, the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace.

The statement was as follows :—

Khesub Chunder Mannah came to me about 4 or 5 months ago and asked me for a draft of a letter of advice. I then made out a draft of letter which I gave him. This draft marked A is the original of the draft I gave to Khesub Chunder Mannah for which I received Rs. 2. I afterwards asked him why he wanted the draft. He said that a man in my office had promised to make him rich. He did not tell me his friend's name. He again came to me during our December holidays and told me that he had got a great lot of money on the draft I gave him. I asked him to give me some. He said I will give you some afterwards. I will give you cash. I will not give you notes. When making out the draft letter of advice Khesub Chunder Mannah told me to make it payable to Beny Madub Mannah but who that is, I don't know.

Statement is correct.

I received from Khesub Chunder Mannah notes, cost Rs. 8,300 of Rs. 20 each at my house I kept it in my box now burnt on Thursday last.

H. C. GHOSH.

30*th January*, 1876.

Written in my presence.

J. LAMBERT, *J. P. and Magistrate.*

30*th January*, 1876.

I hereby certify that the above is a true copy.

CHARLES PIFFARD,
Offg. Clerk of the Crown.
1*st March*, 1883.

At the trial of the prisoner at the Criminal Sessions of the High Court, this statement was tendered in evidence against him and admitted by the Judge, who overruled an objection on behalf of the prisoner that, under section 25 of the Evidence Act, it was inadmissible.

On a case certified by the Advocate General under clause 26 of the Letters Patent, held that the confession was, under section 25 of the Evidence Act, not admissible in evidence. *Per* GARTH, C. J. :—Section 26 of the Evidence Act is not to be read, as qualifying the plain meaning of section 25. In construing section 25, the term "Police officer" is not to be read in a technical sense, but in its more comprehensive and popular meaning.

Per Curiam :—Section 167 of the Evidence Act applies as well as to criminal as civil cases.

Per GARTH, C. J. (PONTIFEX, J. doubting) :—The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction, is, in a case coming before the Court under section 26 of the Letters Patent, the Court of Review, and not the Court below. Such decision is to be come to on being informed by the Judge's notes, and if necessary by the Judge himself, of the evidence adduced at the trial.

Per Curiam :—Apart from section 167 the Court has power, in a case under clause 26 of the Letters Patent, to review the whole case on the merits, and affirm or quash the conviction.

Chumman Shaw & another, 3 I. L. R. Calc. 756, S. C. 2 C. L. R. 317.

The attestation required by section 346 of the Criminal Procedure Code (Act X of 1872) is unnecessary when a confession is made in Court to the officer trying the case at the time of trial.

Empress v. Ashootosh Chuckerbutty & others, 4 I. L. R. Calc. 483 F. B. S. C. 3 C. L. R. 270.

Under section 30 of the Evidence Act, the confession of a prisoner affecting himself and another person charged in the same offence is, when duly proved, admissible as evidence against both, but such second person cannot, when it is uncorroborated as against himself, be legally convicted on it.

Per GARTH, C. J. :—Such evidence must be dealt with by the Court in the same manner as any other evidence. The weight, however, to be attached to such evidence, and the question, whether taken by itself, it is sufficient in point of law, to justify a conviction, is a question for the Judge. Unsupported by other evidence, it, however, should be taken as evidence of the very weakest kind, being simply a statement of a third person not made upon oath or affirmation. If such confession is corroborated by other evidence, it is immaterial whether, in proving the case at the trial, the confession precedes the other evidence, or the other evidence precedes the confession.

Per JACKSON, J., (MCDONNELL, J. concurring) :—Such evidence is not sufficient to support a conviction, even if corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction.

Per Curiam :—The word "Court" in section 30 of the Evidence Act, means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury.

Empress v. Mannoo Jamoolee, 4. I. L. R. Calc. 696 : S. C. 4 C. L. R. 137.

When the confession of a prisoner under section 122 of the Criminal Procedure Code (Act X of 1872) was not taken in the manner provided by section 346 and was, therefore defective, held, that the evidence of the recording officer, that such confession was actually made, was inadmissible to remedy the defect. Reg. *v.* Bai Ratan (10 Bom. H. C. Rep. 166) followed.

Empress v. Anuntram Sing & others, 5 I. L. R. Calc. 954; S. C. 6 C. L. R. 397.

A confession recorded by a Magistrate who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under section 193 of the Criminal Procedure Code (Act X of 1872), and not as a confession recorded under section 122, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police investigation. To such a confession consequently the provisions of the last paragragh of section 346 apply.

Section 122 of the Criminal Procedure Code, contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried.

Empress *v.* Munnoo Tamoolee, (4 I. L. R. Calc., 696) distinguished.

Empress v. Noshai Mistri & another, 5 I. L. R. Calc. 958; S. C. 6 C. L. R. 353.

When a confession is made to a Magistrate by an accused person during an enquiry held previously to the case being taken up by the committing officer, and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of sections 122 and 346 of the Code of Criminal Procedure (Act X of 1872). If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session may take evidence that the accused person duly made the statement recorded; but a Court of Session is not at liberty to treat a deposition sent up with the record, and made by the recording officer before the committing officer to the effect that the accused person did in fact duly make before him the statement recorded, as evidence of that fact. In such a case, the recording officer must himself be called and examined by the Court of Session, except in cases in which the presence of the recording officer cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court of Session considers unreasonable.

Empress v. Dabeepershad, 6 I. L. R. Calc. 530, S. C. 7 C. L. R. 541 O. J.

An admission made by an accused person to a police officer before arrest is admissible in evidence.

Empress v. Noor Bux Kazi & others, 6 I. L. R. Calc. 279, S. C. 7 C. L. R. 385.

A prisoner charged together with others with being a member of an unlawful assembly, made a statement before the committing Magistrate implicating his fellow prisoners and another person. He subsequently withdrew this statement, and made another in which he endeavoured to exculpate himself.

Held, that this statement was not evidence against the other prisoners under section 30 of the Evidence Act (I of 1872). It was not a confession, nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged, but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself, and any mention made by him in such a statement of other persons having been engaged in the riot was altogether irrelevant and not evidence against them.

Empress v. Chunuranath Sirkar & others, 7 I. L. R. Calc. 65; S. C. 8 C. L. R. 352.

Several persons were charged together with offences under sections 148, 302, 324 and 326 read with section 149 of the Penal Code. The Sessions Judge when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court until his turn for examination came round, and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court. Held, that the evidence so given was inadmissible.

Empress v. Munshi Sheikh & others, 8 I. L. R. Calc. 616.

The confession of an accused person was recorded in a simple narrative form, instead of in the shape of question and answer as required by the Code of Criminal Procedure (Act X of 1272), section 346. There was nothing in the character of the confession, or in the circumstances of the case, to lead to the inference that the accused had been prejudiced by the error. Held, that the error did not affect the admissibility of the statement in evidence.

Titu Maya v. The Queen, 8 I. L. R. Calc. 618 note, S. C. 1 C. L. R. 1 F. B.

In this case the prisoner was convicted of murder, the offence having been committed on the 10th of September 1876.

He was committed by Mr. Luttman Johnson, the Magistrate of Cachar, for trial before the Sessions Court. In the course of the enquiry preliminary to commitment the prisoner was twice examined by the Magistrate. If the statements made by him on the occasions of these examinations were admissible in evidence, the conviction could be supported. But if those statements were not admissible, then there clearly was no evidence to warrant conviction. The question was, whether the statements made by the prisoner on those two examinations were under the circumstances admissible.

The first examination of the accused was on the 21st of September. The Magistrate in his own hand recorded fully in English each question and answer, and at the end he signed the memorandum and added "Note—police connected with the case were carefully excluded from the Court and

the accused was given every opportunity of correcting any of his statements. His manner was that of a person speaking the entire truth." And this note was initialed by the Magistrate and dated the same 21st September. Simultaneously a *Mohurir* in the presence of the Magistrate, recorded in the vernacular all the answers given by the prisoner but the questions put were not recorded in the vernacular. At the end of this vernacular record, the Magistrate certified "taken in my presence and hearing and contains accurately the whole of the statement made by the accused person" and this certificate was signed and dated by the Magistrate. To this the Magistrate appended a note—"the clerk has unfortunately omitted questions. They are, however, entered fully in my memorandum"—and this he signed—after that a few words seem to have been added on the same day by the prisoner. They were recorded by the Magistrate in his own hand in his memorandum and simply signed by him, and they were recorded by the clerk in the vernacular and initialed by the Magistrate.

On the 12th October the prisoner was further examined by the Magistrate. The questions and answers were fully recorded both in the English memorandum and in the vernacular, and the record was duly attested by the Magistrate. But neither the record of the examination of the 12th October, nor the previous record of the examination of 21st September, were signed by the accused person as required by section 346, (Act X of 1872) nor was there anything to show that the record of the examination every question and every answer was shown or read to the accused as directed by the first clause of section 346.

The questions referred for the opinion of the Full Bench were :—

First.—Whether the omission to obtain the signature or attestation of the accused person as directed by section 346, necessarily prejudiced the prisoner within the meaning of the last clause of that section and rendered the record inadmissible ?

Secondly.—Whether the omission to obtain the signature, &c. of the accused person, as required by section 346, or the omission to record in the vernacular, the questions put to the accused person, or both these omissions taken together, necessarily rendered the record inadmissible even although it appeared from the Magistrate's certificate that, taking the English memorandum together with the vernacular, the whole of the questions and answers were fully recorded ?

Thirdly.—Whether the defect could be cured by taking further evidence then, supposing it could be proved that in fact the record was duly read to the accused person ?

GARTH, C. J. :—As regards the first point stated for our opinion, it now appears, that the statement made by the prisoner does purport to bear his signature, and in the absence of any evidence to the contrary, and there being no defect in the certificate endorsed by the Magistrate in compliance with the directions of section 346, we must take it that the signature is that of the accused person. Then secondly, as to the omission on the part of the Magistrate to record in the vernacular, the questions put to the prisoner,

it is clear that, in this instance, the prisoner is not, and cannot have been prejudiced in any way by the omission. The questions were of such a nature that it is perfectly immaterial to the sense and meaning of the prisoner's statement whether they were recorded or not. The case will go back to the Bench which referred it for disposal.

The following cases bearing on the subject are reported; Reg. *v.* Bai Ratan, 10 Bom. Rep. 166. Reg. *v.* Nussurudin, 21 S. W. R. Cr. 5. Reg. *v.* Kalachand Pal, 24 S. W. R. Cr. 29. Reg. *v.* Chunder Buttacharjee. Id. 42 Reg. *v.* Wuzir Mundul, 25 S. W. R. Cr. 25. Reg. *v.* Daya Anand, 11 Bom. Rep. 44. Reg. *v.* Deva Dayal, Id. 237. Reg. *v.* Shivya, I. L. R. I. Bom. 219.

Reg. v. Shivya & others, 1 I. L. R. Bom. 219.

A confession recorded under section 122 of the Code of Criminal Procedure (Act X of 1872) to be admissible in evidence, must not only bear a memorandum that the Magistrate believed it to have been voluntarily made, but also a certificate under section 346 of the Code that it was taken in the Magistrate's presence and hearing, and contains accurately the whole of the statement made by the accused person.

No oral evidence can be received to prove the fact of the confession if the confession itself be inadmissible. Reg. *v.* Bai Ratan (10 Bom. H. C. Rep. 166) followed.

Empress v. Malka I. L. R. Bom. 643.

Section 122 of the Code of Criminal Procedure (Act X of 1872) authorizes a Magistrate to record the statement of a person who appears before him as a witness, as well as the confession of a person accused of an offence.

Imperatrix v. Pitamber Jina, 2 I. L. R. Bom. 61.

Section 25 of the Indian Evidence Act (I of 1872), does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him. Such a confession is not to be received or treated as evidence against the person making it, but simply as evidence on behalf of the other.

Ranchordas Walji and Pitamber Jina were tried at the third Criminal Sessions in 1877 for the murder of Pragji Dhunji. Inverarity, who appeared for the second prisoner Pitamber Jina, at the commencement of the trial asked that the prisoners should be tried separately.

Marriott, Advocate-General (acting) on behalf of the Crown, objected to this course, and the application was refused by the presiding Judge (Atkinson, J.) and the prisoners were tried together.

It was proved that the prisoners had gone together on the day before the murder, to select and purchase the knife with which the murder was committed, and on the night of the murder had driven in company with the murdered man in a bullock-cart to a spot at a short distance from the place where the murder was committed, that all three had there dismounted and walked away together, that after an interval, the first prisoner returned alone, and getting into the cart desired to be driven back, that the cart-driver noticing stains of blood on the sleeves of his passenger suspected

something was wrong, and accordingly on reaching a police station on the road stopped and gave information to the police which resulted in the discovery of the murder and the apprehension of the two prisoners.

Inverarity in cross-examining the cart-driver who was one of the witnesses for the prosecution wished to ask whether, while the first prisoner was seated alone in the cart, the witness had not heard a policeman ask the first prisoner what he had done and the first prisoner replied "I have killed a man and the other has run away."

Gill, for the first prisoner objected to the question.

Marriott for the prosecution, also objected and the learned Judge ru that the question could not be put.

The jury eventually, on the 5th July 1877, returned a verdict of guil against both prisoners.

Atkinson, J., however, on the motion of Inverarity, for the seco prisoner, under clause 25 of the Letters Patent 1865 and section 101 of t High Court's Criminal Procedure Act (X of 1872) reserved for the decisi of two or more Judges of the High Court, the question whether the eviden of the first prisoner's confession had, under the circumstances above state been rightly excluded.

Held, that section 25 of the Indian Evidence Act (I of 1872) does n preclude one accused person from proving a confession made to a pol officer by another accused person tried jointly with him. Such a confess is not to be received or treated as evidence against the person making it simply as evidence on behalf of the other.

Westropp, C. J. :—We are unanimously of opinion that the question which Mr. Inverarity proposed to put to the cart-driver Bala Ramji in cross-examination was under the circumstances admissible. On hearing the arguments, we have come to the conclusion that section 25 of the Indian Evidence Act (I of 1872) does not preclude the Counsel for one accused person on behalf of his client asking questions to prove a confession made by another accused person. But, under such circumstances, it would be the duty of the Judge to instruct the jury that such confession is not to be received or treated as evidence against the person making it, but simply as evidence to be considered on behalf of the other. We also think that unless the law were so, the accused person who was on his trial with the confessing party might be considerably prejudiced by the exclusion of that evidence. The 25th section only provides that "no confession made to a police officer shall be proved *as against* a person accused of any offence." In this case the confession was sought to be proved not *as against* either the confessing person or his co-accused but on behalf of the latter. There is not anything of which we are aware in the Indian Evidence Act to which act alone (section 2) we are at liberty to look for the law of evidence in this country, that would justify us in excluding such evidence when sought to be given on behalf of the co-accused provided it be relevant. It may be said that it is a matter of difficulty for a jury to give to the latter accused the benefit of such evidence, and not to permit it to prejudice in their minds the confessing party. But the Court is not to presume that the jury will disobey

the direction of the Judge (whose duty it is to instruct the jury as to the law), when he tells them as he should do, that the confession made to a police officer is not to be regarded as evidence against the accused who made it. That accused would have the protection of the direction, whereas if the confession were wholly excluded, the co-accused might suffer serious injury and would be absolutely helpless. The value of the confession as a circumstance in his favour may be great or small. That is a matter to be weighed by the jury. When a Judge on persuing the depositions before trial, perceives that such a confession by one accused is likely to be offered in evidence on behalf of another accused, it would be an important matter for his consideration whether it would not be desirable to direct that the accused persons should be separately tried."

Empress v. Rama Sirapa, 3 I. L. R. Bom. 12.

Where more persons than one are jointly tried for the same offence, the confession made by one of them if admissible in evidence at all, should be taken into consideration against all the accused, and not against the person alone who made it. The circumstances which will render a confession objected to under sections 24—26 of the Indian Evidence Act (I of 1872) admissible in evidence discussed.

Imperatrix v. Sirasapa, 4 I. L. R. Bom. 15.

An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court, commits no offence punishable under section 180 of the Indian Penal Code.

Empress v. Bala Patel, 5 I. L. R. Bom. 63.

A. and B. were committed for trial; the former for dacoity under section 395 of the Indian Penal Code, and the latter under section 412 for receiving stolen property knowing it to be such. A. made two confessions, and in both he stated he had handed over to B. some pieces of gold and silver stolen at the dacoity. When B. was arrested, a gold ring and a silver wristlet were found in his possession. At the trial A. pleaded guilty and B. claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B. out of pieces of gold and silver given to him for the purpose by B. On this evidence, and on the confessions made by A. the Session Judge convicted B. On appeal to the High Court Held, that A. and B. not having been tried jointly for the same offence, the confession of A. was inadmissible as evidence against B. There was therefore no evidence of the identity of the goods stolen at the dacoity, with those found in B.'s possession and the case against him failed. Conviction quashed.

Empress v. Daji Narsu & Govinda Natha, 6. I. L. R. Bom. 288.

If the certificate required by section 122 of the Code of Criminal Procedure (Act X of 1872) that a confession is voluntarily made is not recorded by the Magistrate at the time the confession is made, or at any rate on the day it is reduced to writing, the confession is bad and inadmissible in evidence.

To render the statement of one person jointly tried with another for the same offence, liable to consideration against that other, it is necessary that it should amount to a distinct confession of the offence charged.

Empress v. Lakshman Bala & Bala Ramseth, 6 I. L. R. Bom. 124.

The two accused persons were jointly tried before the Session Judge on a charge of murder. The Session Judge examined each of the accused in the absence of the other, making the latter withdraw from the Court during the examination of the former, though without objection from the pleaders of the accused persons. Held, that the examination of each accused could be used only against himself and not against his fellow accused. Imperatrix *v.* Chandra Nath Sarkár, (I. L. R. 7 Calc. 65) followed.

Imperatrix v. Pandharinath, 6 I. L. R. Bom. 34.

A statement made to the police officer by an accused person while in the custody of the police although intended to be made in self-exculpation and not as a confession may be nevertheless an admission of a criminating circumstance, and if so, under sections 25 and 26 of the Indian Evidence Act, I of 1872 it cannot be proved against the accused. After excluding evidence improperly admitted and put before the jury, the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it. It accordingly reversed the conviction and sentence of the accused declining to order his re-trial.

MELVILL, J. :—The witness No. 14, a police officer, says, "The accused was sent for and shown this cheque, and he said that one Kisan had given it to him. This was at the *faraskhana*. He was in custody. Accused said this after his arrest. This statement of the prisoner that Kisan had given him the cheque, was used by the prosecution as an admission by the prisoner, that he had had possession of the cheque, and it was put to the jury as amounting to such an admission. It is contended that sections 25 and 26 of the Indian Evidence Act (I of 1872) prohibit such a use of such a statement when made to a police officer, or by a person in custody of a police officer, and we have come to the conclusion that this contention is well-founded. It is true that the statement in question was probably not intended as a confession of guilt, but was rather made by the prisoner in self-exculpation, but it is nevertheless an admission of a criminating circumstance on which the prosecution mainly relies, and formed indeed the most important part of the evidence against the accused. We think that such an admission comes properly within the rule of exclusion which the Legislature has laid down in regard to confessions made by a person in custody of the police.

Reg. v. Ambigara Hulaqu & another, 1 I. L. R. Mad. 163.

A conviction based solely on the evidence of a co-prisoner is bad in law.

Empress v. Ramanjiyya, 2 I. L. R. Mad. 5.

Where a Magistrate in taking the confession of a prisoner under section 122 of the Criminal Procedure Code (Act X of 1872), omits to take it in writing with the formalities prescribed by section 346 of that Code, such confession is not absolutely inadmissible in evidence. Evidence may be taken to show that the prisoner duly made the statement re-

corded. Reg. *v.* Shivya and others (I. I. L. R. Bom. 219) dissented from. A village munsif in the Madras Presidency is a "Magistrate" within the meaning of section 26 of the Indian Evidence Act, 1872. The word "include" in clause 13 and other clauses of section 1 of Act I of 1868 is intended to be enumerative, not exhaustive.

Empress v. Bhawani, 1 I. L. R. All. 664.

A conviction of a person who is being tried together with other persons for the same offence, cannot proceed merely on an uncorroborated statement in the confession of one of such other persons.

Empress v. Ramchand 1 I. L. R. All. 675.

A conviction of a person who is being tried together with other persons for the same offence, cannot proceed merely on an uncorroborated statement in the confession of one of such other persons.

This case is not reported in detail, as PEARSON, J. took in it the same views as TURNER, J. in Empress *v.* Bhawani.

Empress v. Ganraj & others, 2 I. L. R. All. 444.

Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons, and was not sufficient of itself to justify his conviction, held, that such confession could not be taken into consideration under section 30 of Act I of 1872, against such other persons. Reg. *v.* Belat Ali followed.

Empress v. Mulu, 2 I. L. R. All. 646.

Held also, where a person being tried jointly with other persons, made a statement deprecating any guilty knowledge, and seeking to clear himself at the expense of such other persons, that such statement could not be taken into consideration under section 30 of Act I of 1872 against such other persons. Reg. *v.* Belat Ali (10. B. L. R. 453) and Empress *v.* Ganraj (I. L. R. 2. All. 444) followed.

Empress v. Bhairon Singh & others, 3 I. L. R. All. 338.

A confession does not become irrelevant merely because the Memorandum required by law to be attached thereto by the Magistrate taking it, has not been written in the exact form prescribed.

Hiran Miya alias Abdool Wahid in re, 1 C. L. R. 21.

Under section 25 of the Indian Evidence Act, I of 1872, a confession made to a police officer is inadmissible in evidence, except so far as is provided by section 27. It is immaterial whether such police officer be the officer investigating the case, the fact that such person is a police officer invalidates a confession.

Sofiruddeen & others, Appellants, 2 C. L. R. 132.

Where the only evidence in a sessions trial was confessions made to a Magistrate but subsequently retracted, and it was established that the police misconducted themselves in the search of the house of the prisoners who confessed, and of others under trial, and produced

evidence which was rejected as false, it was held that the prisoners could not safely be convicted on their own statements without any corroboration.

Empress v. Hari Kisto Biswas, 5 C. L. R. 209.

A defect in a confession taken under section 122 of the Code of Criminal Procedure (Act X of 1872) cannot be remedied as in the case of an examination of a prisoner under section 346 by evidence taken at Sessions.

Behari Hajdi, Appellant in re, 5 C. L. R. 238.

Section 122 of the Criminal Procedure Code (Act X of 1872) does not apply to a confession recorded by a Magistrate acting under Chap. XV. or Chap. XVII, but to a confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried, and to a confession made during or before the commencement of an investigation by the police.

Empress v. Krishno Monee, 6 C. L. R. 289.

A confession made by an accused person before a Magistrate who has jurisdiction to deal with the matter to which it relates, may be made the commencement of a trial or enquiry under Chapter XV of the Criminal Procedure Code (Act X of 1872), and be treated as a confession under section 346, whether or not the case be still under the investigation of the police.

Per Curiam :—The object of section 122 of the Code of Criminal Procedure is to enable any Magistrate other than the Magistrate by whom the case is to be tried or enquired into, to record a confession promptly. Behari Hadji, 5 C. L. R. 238 and Reg. *v.* Shivya, I. L. R. 1 Bom. 219 discussed.

Empress v. Anthram Singh & others, 6 C. L. R. 297.

Two accused persons on being arrested, were forwarded in custody to a Magistrate who had jurisdiction in the matter with which they were charged, and who afterwards conducted the preliminary enquiry and committed them to the Court of Sessions. Before the Magistrate each made a confession, but neither of them attested his confession by his signature or mark. Held, that the confessions, although the Magistrate had noted that they were taken under section 122 of the Code of Criminal Procedure, (Act X of 1872) must be regarded as having been taken in the course of preliminary enquiry, and that the provisions of section 346 allowing the evidence of the committing Magistrate to be taken applied.

Per Curiam :—Section 122 contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is to be enquired into or tried.

Reg. v. Belat Ali, 10 B. L. R. 453; S. C. 19 S. W. R. Cr. R. 67.

To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried.

Confession of one prisoner when admissible against another. Accomplice—Corroborative evidence. PHEAR, J. :—The corroboration which is needed to make Soorut Ally's testimony against the prisoners trustworthy, should be corroboration derived from evidence which is independent of accomplices, which is not vitiated by the omplice, character of the witness, not affected, namely, by the disposition he part of one whose guilt is disclosed, to purchase impunity or advan- by falsely accusing others; and further should be such as to support portion of the accomplice's testimony which makes out that the prisoner present at the time when the crime was committed, and participated he acts of commission. It appears to me that this section (30 of the lence Act) must be interpreted to mean that the statement of fact made he prisoner which amounts to a confession of guilt on his part may be en into consideration so far, and so far only, as that particular statement fact itself extends against the other prisoners who are being tried as well himself for the offence which is thus confessed. I think the illustrations ich are given to this section bear out this view. If this be so, we must be eful not to apply statements made by Ram Indro Dass before the Magis- ate against other prisoners than himself further than those same state- nents amount in themselves to a confession of guilt on his part."

Reg. v. Mohesh Biswas & others, 10 B. L. R. 455 note. S. C. 19 S. W. R. Cr. R. 16.

The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses, deposing to a confession, themselves arrived from the nswers which the accused gave to questions put by them.

eg. v. Soobjan, 10 L. R. 332.

Where an accused makes two distinct statements, the one amounting a confession of guilt, the other repudiating guilt, if the one statement is ken against the accused, the other also must be taken, for what it is orth, in his favour. The Court ought to weigh well the relative credibility the two statements before it accepts the one in preference to the other.

Documents which were in the record sent up by the Magistrate, but hich were not put in evidence before the Sessions Judge, were looked at ecause they told in favour of the prisoner.

The prisoner was tried for wounding one Lynch with intent to murder him, and wounding him with intent to do grievous bodily harm. The crime was committed on the high seas on a ship called the "Peruvian Congress," on which the prisoner was a seaman.

eg. v. Hicks, 10 B. . R. App. I.

The Standing Counsel (Mr. Kennedy) having proved that the master of the "Peruvian Congress" had sailed from Calcutta and could not be found, tendered, under sections 33 and 80 of the Evidence Act (I of 1872) his deposition before the committing Magistrate. The deposition contained the following statement of an admission alleged to have been made to the deponent by the prisoner when in custody :—"I said to the prisoner, 'Is this the knife you stabbed him with?' He said, 'Yes, Sir;' I said, 'This beats

anything I ever saw!' He said, "Well, I intended to kill him as I know d——d well that I shall be hanged for it.'"

The alleged admission was made under the following circumstances as stated in the master's deposition: "at this time," *i. e.*, immediately after the commission of the crime, I was making preparations to resist an mutiny. I went upon the poop, where I had sent the carpenter, the bo swain's mate, the painter and the carpenter's mate with muskets. I t with me my rifle. The men were all in the forecastle at this time called them to come out, saying, that I would fire upon them if they die do so. They all came aft on the starboard side. I saw the prisoner them. I said to him 'Do you surrender yourself as a prisoner?' He "Yes, Sir." I had him placed in irons."

The Standing Counsel asked that the portion of the deposition c taining the alleged admission by the prisoner might be read; but PHEAR, refused to allow this, as the admission was stated to have been ma immediately after the prisoner with others had been threatened by witness, to whom the statement was made, with a loaded rifle. It w immaterial that the threat was not for the purpose of extorting the co fession, but in order to suppress an attempt at mutiny.

Reg. v. Macdonald, J., 10 B. L. R. App. 2.

The prisoner was indicted for theft and dishonestly receiving stole property. The prosecutor, while travelling by trai to Calcutta discovered that his courier bag, contai ing his watch, chain, and a sum of money, had bee stolen. He reported his loss to a Railway police inspector at the first sta tion at which the train stopped after he became aware of the theft, th prisoner not then being present.

The Standing Counsel (Mr. Kennedy) tendered evidence of this repor PHEAR, J. held it to be admissible under section 8, illustration K. of th Evidence Act (I of 1872).

The Standing Counsel next tendered evidence of a statement made b the prisoner to the constable who arrested him, to the effect that the watc and Rs. 1,000 had been given to him by his sister, and that he had bough the chain. PHEAR, J. observing that there is a distinction in the Evidenc Act, between admissions and confessions, admitted the evidence.

Reg. v. Hurgobind & another, 2 N. W. P. Rep. All. 336.

Statements of accused can only be used in evidence as against th parties making them, and cannot be used as corroborative evidence against others.

Reg. v. Hursookh, 2 N. W. P. Rep. All. 479.

A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate.

Reg. v. Bheebeekee, 4 N. W. P. Rep. All. 16.

To make the examination of an accused person before a Magistrate legal evidence in a Sessions Court, something more than the mere signature of the Magistrate thereto is necessary. The certificate under the Magistrate's hand, required by Section 205 of the Criminal Procedure Code, (Act XXV of 1861) must be attached.

A confession should be recorded in the language in which it is made.

Reg. v. Mussamut Luchoo, 5 N. W. P. Rep. All. 86.

The accused confessed to a police constable on being assured by him that nothing would happen to her, that she had killed her newborn child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife with which stone and knife, she said that she killed the child. Before the committing Magistrate she made the same statement. At her trial before the Sessions Judge, she admitted the birth of the child, but stated that it did not cry and that she buried it, not knowing whether it was alive or dead. She also stated that the police constable had pressed and threatened her and told her, that if she confessed the truth, nothing would happen to her, she denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground, and then buried it. There was no evidence to show that the child was born alive. Held, that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say, that the confession made before the Sessions Judge, was made after the impression caused by the promise of the police constable had been fully removed, and that, looking at the fact that the promise of safety had been made, that the confession was, even if accepted, of a limited character; that there was nothing to show that the child was born alive, and considering that if the child was born dead, the accused might under fear of exposure and disgrace have wished to conceal the body, the accused must be acquitted of murder.

Reg. v. Bakur Khan, 5 N. W. P. Rep. All. 213.

The statement of a person tried jointly with other persons for the same offences is not made less of an admission, as to all that the person knew concerning the offence, affecting himself and the other persons, by the fact of the Court not thinking him guilty of the offence charged.

Reg. v. Bhuttun Rugwan & others, 12 S. W. R. Cr. R. 49.

The properly attested confession of a prisoner before a Magistrate, is sufficient for his conviction without corroborative evidence, and notwithstanding a subsequent denial before the Sessions Court.

Reg. v. Boidnath Singh & others, 3 S. W. R. Cr. R. 29.

A Deputy Magistrate should not act as Magistrate in a case in which he is himself the prosecutor, and take confessions of prisoners before himself.

Reg. v. Chokhoo Khan, 5 S. W. R. Cr. R. 70.

The whole and not part only of a prisoner's confession must be taken in order to his conviction.

Reg. v. Dhurun Dutt Ojah & others, 8 S. W. R. Cr. R. 13.

A police officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such confession is legally admissible. Remarks to the effect that the prisoner was a person of wealth and influence, and had prevented truth from appearing, ought not, unless established in evidence, to find a place in a judgment.

Reg. v. Domun Kahar & others, 12 S. W. R. Cr. R. 82.

Section 109 of the Code of Criminal Procedure (Act XXV of 18[illegible]) refers to cases where the confession of a prisoner a[illegible] been made to the Magistrate conducting the inve[illegible]gation, and not to the police. It is only when p[illegible]perly made to the Magistrate, that the confessi[illegible] can be used as evidence against the prisoner. The mere standing by o[illegible] the Magistrate when the confession is being made to the police is not sufficient.

Reg. v. Jhuree & another, 7 S. W. R. Cr. R. 41.

A voluntary and genuine confession is legal and sufficient proof [illegible] guilt.

Reg. v. Kally Churn Lohar & others, 6 S. W. R. Cr. R. 84.

The confession of an accused person is only e[illegible]dence against himself.

Reg. v. Bhikaree, 15 S. W. R. Cr. R. 63.

The importance of properly recording and attesting the confessions of prisoners under section 205 of the Code of Criminal Procedure (Act XXV of 1861) pointed out.

Reg. v. Chupput Khyrwar, 15 S. W. R. Cr. R. 83.

Before the examination of a prisoner in the presence of the committing officer can be used as evidence against him under section 366, Criminal Procedure Code (Act XXV of 1861) the provisions of section 205 of that Code must have been complied with, and the committing officer's attestation affixed in full to the examination.

Reg. v. Durbaroo Dass Sirdar, 13 S. W. R. Cr. R. 14.

The confession of one prisoner cannot be used as corroborative evidence against another prisoner. Corroboration as to the details of the crime without corroboration as to the person of the accused is worthless.

Reg. v. Goopeenath Kollu, 13 S. W. R. Cr. R. 69.

A confession made to a Joint-Magistrate of a district in charge of the sudder sub-division, is receivable in evidence although the Joint-Magistrate may not have been specially empowered under Act VIII of 1869 to receive the confessions of prisoners. A confession made to a private individual, may be evidence against the prisoner, if proved by the person before whom the confession was made.

Reg. v. Kisto Mundul & others, 7 S. W. R. Cr. R. 8.

An admission by A. and B. that the crime charged against them, was committed by C. and D., and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. Previous statements of witnesses on oath, are not available as evidence in a subsequent trial.

Reg. v. Kodai Kahar, 8 W. R. Cr. R. 6.

The Magistrate in his grounds of committal, and the Sessions Judge in his conviction, should specifically note with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported. To give weight to confessions of prisoners recorded under section 149, Code of Criminal Procedure (Act XXV of 1861), there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were quite free agents. In a preliminary enquiry before a Magistrate, the evidence should be sent in as found, and not kept by the police till they have made it all complete.

Reg. v. Misser Sheikh, 14 S. W. R. Cr. R. 9.

It is not necessary for a Sessions Judge to read out to prisoners, confessions made by them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate, is to be received in evidence, and the attestation of the Magistrate is *primâ facie* proof of the circumstances.

Reg. v. Kazim Mundle, 17 S. W. R. Cr. R. 49.

Admissions made by a prisoner's vakeel cannot be used against the prisoner.

Reg. v. Mussamut Jema, 8 S. W. R. Cr. R. 40.

A confession before the Magistrate though afterwards retracted before the Sessions Court, is evidence against the party making it, under section 366 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Ramchurn Chamar & others, 4 S. W. R. Cr. R. 10.

An admission of crime when fairly made after due warning, is not inadmissible simply because at the time it was made, no formal accusation had been made against the party making it.

Reg. v. Ramdhun Singh, 1 S. W. R. Cr. R. 24.

A Magistrate acts without due discretion, when as a prosecutor, he holds out promises to prisoners as an inducement to them to confess.

Reg. v. Runjeet Soutal, 6 S. W. R. Cr. R. 73.

A prisoner may be convicted on his own uncorroborated confession.

Reg. v. Sageena & another, 7 S. W. R. Cr. R. 56.

The evidence of a policeman who overheard a prisoner's statement made in another room, and in ignorance of the policeman's vicinity, and uninfluenced by it, is not legally inadmissible.

Reg. v. Shahabut Sheikh, 13 S. W. R. Cr. R. 42.

Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.

Reg. v. Sheikh Boodhoo, 8 S. W. R. Cr. R. 38.

A prisoner's confession must be taken in its entirety.

Reg. v. Sheikh Meherchand, 13 S. W. R. Cr. R. 63.

Under section 366 of the Code of Criminal Procedure (Act XXV of 1861) the examination of the accused before the Magistrate, must be given in evidence at the Sessions trial, whether it tells for or against the prisoner, and it is not in the discretion of the prosecution to put in that examination or not.

Reg. v. Sreemutty Gongola, 6 S. W. R. Cr. R. 81.

The confession of a prisoner before a Magistrate, though retracted before the Judge, is admissible in evidence against the prisoner, provided the Judge be satisfied that it was voluntarily made.

Reg. v. Vahala Jetha, 7 Bom. Rep. Crown Cases, 56.

The words "a Magistrate" in section 149 of the Code of Criminal Procedure (Act XXV of 1861) mean "any Magistrate," and not merely "the Magistrate having jurisdiction." The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence when duly proved.

Reg. v. Bussiruddi & others, 8 S. W. R. Cr. R. 35.

The admission of an accused cannot be taken to be corroborative evidence, or any evidence at all against any body, other than himself. Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test evidence.

Reg. v. Goshtolall Dutt, 7 B. L. R. Ap. 62; S. C. 15 S. W. R. Cr. R. 68.

Under section 205 of the Code of Criminal Procedure (Act XXV of 1861), it is not necessary for the Magistrate to state in the body of the examination, that the statement comprised every question put the accused, and every answer given by him, and that he had liberty to add to or explain his answers.

Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted, to prove the regularity of the proceeding.

Bishoo Manjee, Appellant, 9 S. W. R. Cr. R. 16.

An admission obtained from a prisoner by persuasion and promises of immunity by the police, ought not to be received in evidence, as being in direct contravention of section 146, Code of Criminal Procedure (Act XXV of 1861). The deposition of the police office, moreover, should taken before the admission can at all be used against the prisoner, under section 150, Code of Criminal Procedure.

Reg. v. Munger Bhooyan, Case of, 10 S. W. R. Cr. R. 56.

The confessions of a prisoner in one case in which he was convicted, cannot be used against him in another case, unless they are deposed to on oath, either by the person who took them down, or by some one else who heard them.

Reg. v. Pagaree Shaha, 19 S. W. R. Cr. R. 51.

The accused made a confession to a police inspector, part of which related to the concealment of certain jewels, and in consequence of the information so received, the jewels were discovered:—Held, that under section 27 of the Evidence Act that part of the accused's confession, which described his assault on the deceased, and her consequent death, and the way in which he became possessed of the jewels, related distinctly to the fact of the discovery of the ornaments, and might be proved against the accused.

Reg. v. Jaffir Ali & others, 19 S. W. R. Cr. R. 57.

The confessions of persons tried jointly for the same offence may, by section 30, Act I of 1872, be "considered" as against other parties then on their trial with them, but such confessions, when used as evidence against others, stand in need of corroboration, and cannot be used as corroborating in any way the evidence of approvers against such other parties. Section 30, Act I of 1872 ought to be construed with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial.

Reg. v. Ramchurn Ghose, 20 S. W. R. Cr. R. 33.

The Court, on a consideration of the evidence, set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under section 29 of the Evidence Act, I of 1872.

MARKBY, J. :—.....Then it is also said that the confession was originally obtained by the police officer by means which are prohibited by section 24 of the Evidence Act; that the police officer had violated his duty as laid down in the Code of Criminal Procedure (Act X of 1872), section 120; and that in fact the confession was caused by an inducement, threat or promise, which was operating upon the mind of the prisoner when he repeated his confession to the Magistrate on the following day. Now it appears to us that there is nothing in the evidence which would support that objection. Whether the statement made by the police officer, that the prisoner's brother-in-law had given out that he was guilty, was actually true or not, it does not appear to us that there is anything which would justify us in inferring that the prisoner was induced to suppose that he would gain or lose anything by making the confession. If this amounted to anything at all, it was a deception practised on the prisoner, but though we might disapprove of any deception being practised, section 29 of the Evidence Act expressly says that a confession made in consequence of a deception is not to be excluded."

Reg. v. Mussuruddin & another, 21 S. W. R. Cr. R. 5.

The confession of a witness in the shape of a former deposition, can used as evidence against a prisoner only on the condition prescribed by section 249, Code of Criminal Procedure (Act X of 1872); that is, it must have been duly taken by the committing officer, in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession, in order to afford *primâ facie* evidence under section 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement, ought to give the facts necessary to render the deposition admissible under the section 249.

Reg. v. Bunwaree Lall & others, 21 S. W. R. Cr. R. 53.

Statements made by one set of prisoners, criminating another set of prisoners, when each individual prisoner made a case for himself, on which he was free from any criminal offence, ought not to be taken into consideration under section 30 of the Evidence Act, against the prisoners of the second set, when the two sets, although tried together, were tried upon totally different charges.

Reg. v. Sheikh Buxoo, 21 S. W. R. Cr. R. 65.

Act I of 1872, section 30 which makes the confession of one prisoner evidence against persons other than the man who made the confession, applies only to cases in which the confession is made by a prisoner tried at the same time with the accused person against whom the confession is used.

Reg. v. Jetoo & others 23 S. W. R. Cr. R. 16.

Section 122 of the Code of Criminal Procedure (Act X of 1872) which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistate who is actually investigating the case, and examining the witnesses preparatory to commitment; but to a case where some other Magistrate takes a confession, and forwards it to the Magistrate by whom the case is inquired into or tried.

Reg. v. Naga & others, 23 S. W. R. Cr. R. 24.

The confession of co-prisoners cannot under the Evidence Act, I of 1872, section 30, be treated as evidence of ordinary character not distinguished by any special infirmity or qualifications against the other prisoners, as in addition to the infirmity inherent in an accomplice's testimony, they are not given on oath and are not liable to be tested by cross-examination.

Reg. v. Ram Churn Chung & others, 24 S. W. R. Cr. R. 36.

When a fact is discovered in consequence of information received from one of several persons charged with an offence, and where others give like information, the fact should not be treated as discovered from the information of them all. It should be deposed that a particular fact has been discovered from the information of A B. and this will let in so much of the information as relates distinctly to the information therein discovered.

Reg. v. Chunder huttacharjee, 24 S. W. R. Cr. R. 42.

When more persons than one are being tried for the same offence, and a confession made by one affecting himself and some of the others is proved, the Evidence Act, section 30, does not provide that such confession is evidence, but that it may be "taken in consideration"; the intention of the Legislature being that when, as against any person implicated by such confession, there is evidence tending to his conviction, the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him, shall be taken into consideration as bearing upon the truth or sufficiency of such evidence. When a confession has to be used for the above purpose, the person to be affected by it has a right to demand that it be strictly proved, and shown to have been in all essential respects taken and recorded as prescribed by law (Criminal Procedure Code, Act X of 1872, section 122), *i. e.*, in the manner provided by sections 345 and 346. When the examination of the accused is taken otherwise than in the course of a preliminary inquiry, an omission to comply with the provisions of section 346 cannot be remedied by the evidence of the Magistrate who took it:—The reception, as evidence against an accused person, of a confession which ought not to have been proved, and which is not in accordance with the law, and the grounding of a case against him upon such confession, must be held to be irregularities which seriously prejudice the prisoner.

Reg. v. Nityo Gopal Dass Byrajee, 24 S. W. R. Cr. R. 80.

The ordinary rule of taking confessions as a whole, and giving the accused (in the absence of other evidence against him) the benefit of any circumstances that may appear in his favour therefrom, cannot apply to confessions which are diametrically opposed to each other; but only where the more favourable view is not absolutely inconsistent with the general tenor of the confession.

Reg. v. Keshub Bhoonia & others, 25 S. W. R. Cr. R. 8.

Statements made by a prisoner before the committing officer, which implicate his fellows and exculpate himself, cannot be regarded as evidence under the Evidence Act, section 30.

Goloke Chunder Chowdhry v. The Magistrate of Chittagong, 25 S. W. R. Cr. R. 15.

If admissions are taken as evidence, they must be taken as a whole.

Reg. v. Sonaoollah, 25 S. W. R Cr. R. 23.

Where a person accused of murder, acknowledged having struck his victim, but repudiated the intention to murder, and the Sessions Judge accepted this acknowledgment as a plea of guilty, and omitted to record any further evidence: Held, that the Judge was bound to accept the statement of the accused as a whole, if it was taken as a confession at all. Conviction for murder accordingly set aside, and new trial ordered.

Reg. v. Baijoo Chowdhree & others, 25 S. W. R. Cr. R. 43.

Tainted evidence is not made better by being corroborated by other tainted evidence. The statement of one prisoner cannot be taken as evidence against another prisoner under section 30 of the Evidence Act, unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates. The rules of evidence cannot be departed from because there may be strong moral conviction of guilt.

Choda Atchenah, prisoner, 3 Mad. Rep. 318.

To make the confession of a prisoner, not uttered in the presence of a Magistrate, admissible in evidence, the fact discovered must be one, which of its own force, independently of the confession, would be admissible in evidence. Sections 149 and 150 of the Criminal Procedure Code (Act XXV of 1861) considered.

Reference in Session Case No. 77 of 1869, 5 Mad. Rep. Rul. 11.

It is not necessary for a Magistrate to caution a prisoner before receiving his or her statement.

Proceedings of 24th Jany. 1873, 7 Mad. Rep. Rul. 15.

Section 30 of the Indian Evidence Act (I of 1872) is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence, and bad in law.

Reg. v. Alibhai Mitha, 8 Bom. Rep. Crown Cases, 103.

A conditional pardon was tendered to, and accepted by the accused. He then, on solemn affirmation, made a statement before the committing Magistrate in which he criminated himself and two other persons. Three days afterwards he voluntarily came forward and made, on solemn affirmation, another statement, in which he retracted and contradicted what he had said in his former statement. The conditional pardon was thereupon cancelled, and the accused was put upon his trial. Held, that the first statement was admissible as evidence against the accused, under section 32 of Act II of 1855. (See now section 132 of the Evidence

Act (I of 1872).) The facts of the case were these. The accused, Alibhai, and his family were on terms of enmity with one Umar Vali and his family. There was an affray between the two families, and Gori, the mother of the accused, was slightly wounded on the head. By whom or how this wound was inflicted was not clear; but for treatment of this wound she was admitted into the Civil Hospital; Broach, where, after remaining for three days, she died. Shortly after her death, the accused, Alibhai, complained to the Magistrate F. P. that she had been killed by the beating inflicted upon her by their enemy Umar Vali and his associates, against whom criminal proceedings were accordingly taken, but they were ultimately discharged, and the accused was himself charged with the murder. The Sessions Judge further held, that it was proved that the cause of the woman Gori's death was arsenical poisoning, and not any external injury; that during her residence in the Broach Hospital some food was supplied to her by the accused; that there was every reason to believe that that food contained poison, and that the accused had knowledge that that was the fact. On arriving at his conclusion on this last point, the Sessions Judge observed that without the accused's own statement he should hesitate to convict him. This statement was that the accused first intended to make a charge of simple assault against Umar and his friends, but that at the instigation of his own comrades he poisoned his mother, and charged Umar and his friends with murder. The statement and its withdrawal took place under the following circumstances:—

During a preliminary investigation before the committing Magistrate into the conduct of three persons suspected in this matter, the Superintendent of Police in charge of the case suggested that a conditional pardon should be tendered to the accused, Alibhai. This was done, and Alibhai, being examined as a witness on solemn affirmation, made the statement alluded to above, on the 24th of March 1870. Three days afterwards, Alibhai appeared before the Magistrate of his own accord, and also on solemn affirmation, made another statement, in which he denied all that he had said before, and asserted that he had been induced to make the first statement by the persuasions of his enemies. His pardon was thereupon cancelled, and he was committed for trial. At the trial it was objected, when it was proposed, to put in evidence the prisoner's first statement, that it, being upon solemn affirmation and made as a witness, was not admissible in evidence against him except for the purposes of a trial for giving false evidence.

Per Curiam :—" The trial of this case being in other respects regular, the prisoner's statement was admissible in evidence. A confession improperly obtained—that is, by means of hopes and fears, caused in ways disapproved by the law—is rejected as evidence. But in this case no improper means were resorted to; nothing was done but what the law distinctly approves: and the prisoner, having voluntarily become a witness, is subject, like other witnesses to have what he said in that capacity used against himself,..... It is sufficiently clear that the proper connection of section 32 of Act II of 1855, and of section 179 of the Indian Penal Code is this—that the former establishes an obligation to answer all questions put by a competent authority, while the latter provides a specific

penalty for failure in the prescribed duty. That duty is in part assumed as existing, and in part defined by the earlier enactment, and, where defined, defined on the assumption, to be clearly gathered from the proviso, of an exercise of compulsion by the Court, which can have no place where the whole statement is made without reluctance and without protection being claimed. The provisions of section, 209 and 211 of the Code of Criminal Procedure (Act XXV of 1861) assume that guilty persons may make statements under conditional pardons and be afterwards committed for trial. The ordinary rule is, that everything from which a reasonable inference can be drawn as to the facts in issue is evidence, and if it had been intended that this particular kind of evidence should be inadmissible, a clause to that effect would have been inserted in the Code. The law protects an informer who tells the truth; one who perverts it deserves no protection. And if the former of the prisoner's two statements in the case was the false one, it places him in no worse position than any other accused person who, without lawful excuse, has made a false confession. The only case cited at the bar against this position is Reg. *v.* Radanath Dossadh (8 Calc. W. Rep. Cr. R. 53). This was more dictum than a regular decision arrived at after argument. Mr. Justice Kemp, who was the only sitting Judge in that case, observed:—"The statement made under the promise of pardon is no evidence against the prisoner. To admit such, would be contrary to the policy of section 203 of the Code of Criminal Procedure, as observed by the Judges of this Court on review of the jail delivery statements. With due deference to the opinion of the learned Judge, we think the admission of the statement in question is opposed neither to the policy of the section quoted, nor to the interests of justice. We are confirmed in our opinion by the alteration effected in this section by the Criminal Procedure Amendment Act of 1869, two years after the decision of the above case in 1867. Before amendment, section 203 ran thus: "No influence, by means of any promise, or threat or otherwise, shall be used," &c.; now, the most important words, "except as provided in section 209," are placed prominently at the commencement. The prisoner, without any pressure having been put upon him, came forward and made his statement before the Magistrate; and we must, therefore, take it to be perfectly voluntary. We do not think that the circumstance of its having been made on solemn affirmation renders it invalid. On this point Taylor in section 820, p. 795 (5th ed.) says: "And, indeed, the rule excluding sworn confessions seems strictly confined, at Common Law, to the case of a statement made by the party upon oath *while a prisoner under examination* respecting the criminal charge. It is true that one or two decisions by Mr. Baron Gurney might be cited which seem to extend the rule somewhat further, and to render inadmissible confessions made on oath to Magistrates or Coroners by parties who, after being examined *as witnesses*, have themselves been committed for trial; but the authority of these decisions has been much shaken by subsequent cases, and they cannot now be safely relied upon as law."

Reg. v. Radhanath Dosadh, 8 S. W. R. Cr. R. 53.

A statement made under promise of pardon is no evidence against a prisoner.

See now Reg. *v.* Alibhai Mitha (8 Bom. Rep. Crown Cases, 103).

Rep. v. Kashinath Dinkar & others, 8 Bom. Rep. Crown Cases, 126.

Although the averment on the record of a Magistrate by whom a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is on appeal conclusive as to the fact of such a warning having been given, it is not conclusive to show that such confession has not been made under the influence of fear engendered by *previous* maltreatment, or is not otherwise valueless. Allegations, made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case, was made under such circumstances as to preclude its admissibility in, or diminish its value as evidence, should receive due attention and be inquired into. A Sessions Court refusing to make such inquiry commits a grave error in law and procedure.

Upon an inquiry which the High Court directed the Sessions Judge to make into such an allegation, the prisoners were ordered to be, and were solemnly affirmed, and the prosecution neither objected to the form of the order, nor to the affirmation of the prisoners, and moreover cross-examined them, but objected to their evidence being used upon the return of the inquiry. It was held that the objection, though possibly good if taken in time, was too late, and that the evidence of the prisoners might be used, whether the order directing them to be affirmed was correct or otherwise.

Where during such an inquiry the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper, and eminently calculated to defeat the object of the inquiry.

Reg. v. Garbad Bechar, 9 Bom. Rep. 344.

A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with section 205 of the Code of Criminal Procedure, (Act XXV of 1861), does not amount to a confession, although the plea for retracting the confession, *viz.*, ill-treatment of the accused by the police, may be inquired into and found to be untrue.

Reg. v. Navroji Dadabhai, 9 Bom. Rep. 358.

W. a travelling auditor in the service of the G. I. P. Railway Company, having discovered defalcations in the account of the prisoner, who was a booking-clerk of the Company, went to him and told him that "he had better pay the money than go to jail" and added that "it would be better for him to tell the truth," after which the prisoner was brought before the Traffic Manager in whose presence he signed a receipt for, and admitted having received, a sum of Rs. 826-8-0. The prisoner was subsequently put on his trial for criminal breach of trust as a servant in respect of this and of other sums :—

Held, that the words used by W. the travelling auditor, constituted an inducement to the prisoner to confess, and that W. was a person in authority within the meaning of section 24 of the Indian Evidence Act, and that the receipt signed by the prisoner was, therefore, not admissible in evidence on his trial.

Held also (BAYLEY, J. *dissentiente*) that the High Court, in considering a point of law reserved under Cl. 26 of the Letters Patent, where it is of opinion that evidence has been improperly admitted as to one of two heads of charge of which a prisoner stands convicted (the two heads of charge relating to distinct and separate offences) and that the conviction on such head of charge is bad, has power to review the whole case and, if it appears that the evidence improperly admitted could not reasonably be supposed to have influenced the jury as to the latter head of charge, ought not to set aside the conviction on that head of charge, but should proceed to pass judgment and sentence on it.

Semble: Section 167 of the Indian Evidence Act, applies to criminal trials by jury in the High Court.

Reg v. Bai Ratan, 10 Bom. Rep. 166.

The confession of an accused person, taken by a Magistrate having no jurisdiction to commit or try him, is imperfect, if not signed by the accused person or attested by his mark, and is inadmissible in evidence (sections 12[illegible] and 346 Criminal Procedure Code, Act X of 1872.[illegible]

The term "Preliminary Inquiry" in the final clause of section 3[illegible] means such inquiries as are the subject of Chapters XIV (of Enquiries a[illegible] Trials) and XV (of Inquiry into cases triable by the Court of Session or the High Court); and, therefore, that clause does not apply to confessions recorded under section 122, which refers to an inquiry not during a trial or one held with a view to committal, but an inquiry for the purpose of forwarding confessions, when recorded, to the Magistrate by whom the case o[illegible] the accused person is inquired into or tried. Consequently, when a con[illegible] fession taken under section 122 is inadmissible in evidence, oral evidence t[illegible] prove that such a confession was made, or what the terms of that confessio[illegible] were, is inadmissible also. (Section 91 of the Indian Evidence Act.)

Reg. v. Amrita Govinda, 10 Bom. Rep. 497.

A confession not taken in the form of question and answer, and not authenticated by the Magistrate's endorsement as to its accuracy, is inadmissible in evidence, even though no objection should be made to its reception: sections 45, 122, 256 and 346 of the Code of Criminal Procedure (Act X of 1872) and section 91 of the Indian Evidence Act.

Reg. v. Amrita Govinda, 10 Bom. Rep. 497.

The confession of a person who says he abetted a murder, but withdrew before the actual perpetration of that murder by his associates, cannot be used as evidence against those associates, though the person confessing is tried with them jointly on a charge of murder. Section 30 of the Indian Evidence Act.

Reg. v. Dáya Anand & Ranchod Khalpo, 11 Bom. Rep. 44.

The direction of section 346 of the Code of Criminal Procedure (Act X of 1872) enjoining that an accused person shall sign the record of his confession, is not satisfied by the following:—"Signature of A. B. (the accused); the handwriting of C. D." Where the convictio[illegible]n of a person was passed upon a confession thus subscribed, the High Court

reversed it, and held that the Session Judge was bound to prevent the production of such a confession.

Reg. v. Balvant Pendharkar, 11 Bom. Rep. 137.

In the absence of evidence that a confession of an accused person has been induced by illegal pressure, it is not to be presumed that such confession was so induced. According to section 24 of the Indian Evidence Act, a confession is inadmissible only if the Court considers it to have been induced by illegal pressure. Where the Session Judge did not consider a confession to have been so induced, the High Court, upon a reference under section 263 of the Code of Criminal Procedure (Act X of 1872) held it to have been properly admitted, and finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury.

Reg. v. Kalu Patil another, 11 Bom. Rep. 146.

A prisoner who pleads guilty at the trial, and is thereupon convicted and sentenced, cannot be said to be jointly tried with the other prisoners, committed on the same charge, who plead not guilty. Where, therefore, one of eight prisoners before the committing Magistrate made a confession affecting himself and five others, and afterwards, at the trial before the Assistant Session Judge, pleaded guilty and was thereupon convicted and sentenced, and the Judge then proceeded to take his evidence on solemn affirmation, and recorded his confession as evidence in the case against the other prisioners: Held, that the Judge was wrong in taking the confession into consideration against those prisoners who pleaded not guilty. The proper course for the Judge was either to have sentenced the prisoner who pleaded guilty, and then put him aside, or to have waited to see what the evidence would disclose. Discrepancies are not less infirmative of testimony, because a greater sagacity on the part of witnesses would have avoided them.

Reg. v Malapa Bin Kapana & others, 11 Bom. Rep. 196.

The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others.

Reg. v. Deva Dayal, 11 Bom Rep. 237.

An accused person whose signature to a statement made by him to the committing Magistrate is not taken, as provided in section 346 of the Code of Criminal Procedure (Act X of 1872), is not prejudiced thereby within the meaning of that section, unless he is unfairly affected as to his defence on the merits. Where a prisoner in the Court of Session was represented by a pleader, who had opportunity to object to the admissibility of his statement, and did not, the High Court held that he was not prejudiced.

Reg. v. Jora Hasji & others, 11 Bom. Rep. 242.

Under section 27 of the Indian Evidence Act, not every statement made by a person accused of any offence while in the custody of a police officer, connected with the production or finding of property, is admissible. Those statements only which lead immediately to the discovery of property, and, in so far as they do lead to such discovery, are

properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statements made, must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus mediately, but not necessarily or directly, connected with the fact discovered, are not admissible. That a witness says that a plan was prepared in his presence, is not a sufficient reason for admitting the plan in evidence, unless the witness also says that to his own knowledge the plan is correct.

WEST, J. .....

We also find that a good deal of evidence has been admitted against the accused, to prove what occurred at the hedge where the bones were found, and elsewhere in the fields where the murder was said to have been committed, which ought legally to have been excluded. As a general rule, the law renders statements made by people while in the custody of the police inadmissible. But to that rule is appended a qualifying exception. Section 27 of the Indian Evidence Act has enacted that "When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." Under cover of this provision, we find introduced into this case the discovery of a bill-hook, a knife, and a stick, in order to open the door to admit statements made by the accused when they must have been in the custody of the police. It is of the highest importance that the law on this point should be accurately known by the Courts below as well as the professional gentlemen who practice there. It is not all statements connected with the production or finding of property which are admissible. Those only which lead immediately to the discovery of property, and so far as they do lead to such discovery are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it, and the statement made, must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and so mediately, but not necessarily or directly, connected with the fact discovered, are not to be admitted, as this would rather be an evasion than a fulfilment of the law, which is designed to guard prisoners accused of offences against unfair practices on the part of the police. For instance, a man says: "You will find a stick at such and such a place. I killed Rama with it." A policeman, in such a case, may be allowed to say he went to the place indicated, and found the stick; but any statement as the confession of murder would be inadmissible. If, instead of "you will find" the prisoner had said, I placed a sword or knife in such a spot, when it was found, that, too, though it involves an admission, of a particular act, on the prisoner's part, is admissible, because it is the information which has directly led to the discovery, and is thus distinctly and independently of any other statement connected with it. But if, besides this, the prisoner has said what induced him to put the knife or sword where it has been found, that part of his

statement, as it has not furthered, much less caused, the discovery, is not admissible. The words in section 27 of the Evidence Act "whether it amounts to a confession or not" are to be read as qualifying the word "information" in the immediately preceding context, not the words "so much" and the effect is that, although ordinarily a confession of an accused while in custody would be wholly excluded, yet if, in the course of such a confession, information leading to the discovery of a relevant fact has been given, so much of the information as distinctly led to this result may be deposed to, though as a whole, the statement would constitute a confession which the preceding sections are intended to exclude.

In this case, as in many others, the production of articles, supposed to have been made use of in committing the murder by the prisoners, is adduced as strong evidence against them. The conduct of a prisoner in relation to any relevant fact is good evidence according to section 8 of the Indian Evidence Act; but according to Explanation I. The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements. It is on such a statement that the significance of the act, which it accompanies, in many cases wholly depends; as for instance, when a police officer says to a prisoner, "I must search your house for the stolen property" to which the prisoner replies: "I will give you at once all the valuables I have in the house," and then gives him certain articles, not stolen property, after which stolen jewels are found concealed under his hearth. But if, under cover of an explanation said to have been given by a prisoner of an act in itself ambiguous or not so obviously connected with a fact in issue as to be relevant, it is sought to introduce a confession of a prisoner to the police, or made while in custody of the police, the Evidence Act does not warrant its admission. The rules of exclusion and the exception to them being definitely laid down, the exception is not to be extended to cases not properly falling within it. The giving up by a cultivator of a bill-hook, or the pointing out of a place where *bájri* appears to have been trampled, is, however, in itself an unambiguous act. It is in general also insignificant. It needs no explanation, and a confession accompanying it does not explain it, but is a collateral matter, whose exclusion, where it is excluded, is not prevented by its being connected with matters that are not excluded."

Reg. v. Govind Babli Raul & another, 11 Bom. Rep. 278.

While A. and B. were being jointly tried before a Court of Session, the first for murder and the second for abetment of murder, a confession made by A. that he himself had committed the murder at the instigation of B. was put in as evidence against A. Subsequently the charge against A. was altered to one of abetment of murder, and the Session Judge under the authority of section 30 of the Indian Evidence Act, used the confession against both, and convicted them. The High Court held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been a trial on the amended charge from the commencement; and that no objection having been taken by B. who was represented by a vakil, to the admissibility of A.'s confession against him when the charge against A. was altered, the Session Judge was justified in using the confession against B. also.

Reg. v. Rosa Rue, 13 Cox. Cr. Cases, 209.

To render a confession admissible, it is not so much material to prove to whom or when it is made, as it is to ascertain the mind of the party making it, and to see whether or not it is probable that it was made voluntarily.

The prisoner, a servant girl, was questioned by the mother of a child who had been found dead in a ditch; and she was asked whether she had anything to do with its disappearance; upon which she cried, and said, "If you won't send for the police I will tell the truth," whereupon her mistress replied, "I will not hurt you if you tell the truth; you will be much happier if you tell the truth;" and she promised not to send for the police; whereupon the prisoner made a confession, which upon the trial was rejected as being made under an inducement. It further appeared that, shortly after this confession, the mistress sent for a neighbour and informed him of the confession, whereupon he had an interview alone with the prisoner, and asked her questions upon the subject, but he held out no inducement, and she then made a similar confession. Held, that the second confession was so connected under the circumstances with the first that it was inadmissible.

The prisoner was indicted for the wilful murder of John Barnard, a child a year and nine months old.

Hooper and *Neville* appeared for the prosecution.

St. Aubyn (at the request of the Judge) watched the case for the prisoner.

It appeared that the child, on the day of its death, had been last seen alive in the arms of the prisoner, who was a servant in the family of its parents, and it was afterwards discovered dead in a ditch of water, where it had died from suffocation. No charge at that time was made against the prisoner, but, about two months after, a fire having broken out in the farmyard of the Barnards, suspicion rested upon the prisoner with reference to it, and she was questioned upon the subject by Mrs. Barnard (the mother of the child), and after some conversation as to the fire, she said to the prisoner, "Had you anything to do with my child disappearing from the door step?" Upon this the prisoner cried, and said, "If you won't send for the police I will tell the truth." To this Mrs. Barnard replied, "I will not hurt you if you tell the truth; you will be much happier if you tell the truth," and she promised not to send for the police. Upon this, it was proposed to give evidence of a confession then made, which, however, the learned Judge refused to allow, as being inadmissible on the ground of the inducement. Evidence was then given that a neighbour (a Mr. Sweet) had been shortly afterwards sent for by Mrs. Barnard, to whom she stated the fact of the confession, whereupon, being in the room alone with the prisoner, he put certain questions to her which resulted in her also as it was alleged) confessing to him.

Hooper proposed to give in evidence this alleged confession, and did so upon the ground that it was a voluntary confession made to another person without any inducement.

St. Aubyn contended that this second alleged confession was the offspring of the inducement held out shortly before by Mrs. Barnard, and that the two were under the circumstances so connected as to be each inadmissible.

DENMAN, J. :—"There are cases which hold that a confession once rejected on the ground that it was made under an inducement does not become admissible merely from the fact that it was again made to some other person who has not held out an inducement, the inducement being deemed to be a continuing one. But I am not at this moment aware of any case in which it has been held that, where the person who held out the inducement is absent, then a confession made to a third party is not admissible, no fresh inducement having been held out. The general principle is clear, that if it is made out to the satisfaction of the Judge, that the statement was not made voluntarily, it is not admissible. It is not merely a question as to whom the confession is made, or when it is made; but it is a matter in which you have to get at the mind of the prisoner, and see whether or not it is probable that the confession was made voluntarily, in the proper sense of the word. The objection to it here is, that it would not have been made but for the previous involuntary statement, and it is made in answer to questions put by the person to whom it was made, which questions were induced by the information obtained from the person to whom shortly before a confession had been made under an inducement. (His Lordship here retired to consult with the Lord Chief Baron upon the subject. Upon his return he said :) Having considered the point with the Lord Chief Baron, we are both agreed in thinking that the confession to Sweet must be rejected, upon the ground that it was so connected under the circumstances with the inducement held out by Mrs. Barnard as to be inadmissible in law.

The prisoner was convicted of manslaughter, and ordered to be kept in penal servitude for life.

Reg. v. Dedar Nushyo, 14 S. W. R. Cr. R. 81.

In warning an accused person before taking down his statement, a Magistrate should state how the accused was warned. A Magistrate ought not to use a lithographed stamp of his signature.

Reg. v. Radhu Jana, 3 B. L. R. A. Cr. 59; S. C. 12 S. W. R. Cr. R. 44.

A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it, as required by section 205 of the Code of Criminal Procedure (Act XXV of 1861). The Sessions Judge therefore refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate and taking his evidence in the matter.

Held (1) that the examination of the prisoners was inadmissible in evidence. (2) That it being wholly within the discretion of the Judge, under section 366 to say whether or not he should postpone the trial, or summon any witness to give his evidence, the High Court, as a Court of Revision, would not interfere or order a new trial.

Reg. v. Kala Chand Pal, 24 S. W. R. Cr. R. 29.

A confession not recorded according to the provisions of Act X of 1872, section 346, is inadmissible as evidence.

Reg. v. Monmohun Roy & another, 24 S. W. R. Cr. R. 33.

A statement which a man in the custody of the police, volunteers to one in the position of a Magistrate, can be used as evidence against the man who makes it.

Empress v. Mohan Lal & others, 4 I. L. R. All. 46.

The matter before a "*punchayat*" was whether M. and K. had murdered B. and thereby disqualified themselves from further intercourse with the rest of their brotherhood. M. and K. made certain statements before the *punchayat*, which it was afterwards sought to prove against them on their trial for the murder of B. as confessions corroborating the evidence of an approver. The witnesses called to prove these "confessions" did not state specifically, what was said by M. and K. before the *punchayat*. One witness, a member of the *punchayat*, said: "M. confessed and K. acquiesced." Another witness, also a member of the *punchayat*, said: "M. and K. were taxed with taking B.'s house, upon which both admitted having murdered him." The same witness also said: "The admissions were not taken down." It appeared that it was not till at the sixth meeting of the *punchayat*, and when M. and K. were threatened with excommunication from caste for life, that they made such statements. Held, that, if the statements attributed to M. and K. had been actually made, and assented to, and this fact had been duly proved, the provisions of section 24 of Act I of 1872 could not be pleaded against their admissibility on the ground that such statements had been caused by such threat, for the members of the *punchayat* were not in authority over M. and K. within the meaning of that section, nor was there any threat made having reference to any charge against them. The statements, however, could not be accepted as sufficient in themselves to corroborate the evidence of the approver, or to support the conviction of M. and K. for the murder of B. The statements were in general terms, and represented only the impression conveyed by what might have been said, to the mind of the witnesses. It was always essential that the Court should know as nearly as possible what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were said. It might have been, that the words ascribed to M. and K. taken with the questions put, and the exact subject-matter of the inquiry, did not amount to a confession of the guilt believed by the hearers to have been confessed.

Empress v. Pancham, 4 I. L. R. All. 198.

P. accused of the murder of a girl, gave to a police officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder and would point them out. On the following day he accompanied the police officer to the place where the girl's body had been found, and pointed out the anklets. Held that such statements, being confessions made to a police officer, whereby no fact was discovered, could not be proved against P.

Observations on the use of confessions made to police officers. Reg. *v.* Jora Hasji (11 Bom. Rep. 242) and Empress *v.* Rama Birapa (I. L. R. 3 Bom, 12.) referred to.

One Pancham, convicted by Mr. W. Duthoit, Sessions Judge of Allahabad, of the murder of a girl called Parugia, and sentenced to death, appealed to the High Court. The appeal came on before STUART, C. J. and BRODHURST, J. It was contended before them, *inter alia*, that certain confessions made by the appellant while in the custody of the police, had been used as evidence against him contrary to the provisions of section 25 of the Indian Evidence Act 1872. The learned Judges differed in opinion as to the propriety of the appellant's conviction, STUART, C. J. being of opinion that it should be affirmed, while BRODHURST, J. was of opinion that it should be quashed on the ground that the evidence was insufficient for a conviction. In consequence of this difference of opinion the case was referred to STRAIGHT, J.

STUART, C. J. :—On this subject we have first the evidence of Imam Ali, the head constable of Karari. He deposes, after explaining his finding on the 1st October the blood-stained clothes in Pancham's house: "On the 2nd October, Pancham made a statement to the darogah and gave up this knife as the weapon with which the murder was committed. He took it out of his waist-belt and gave it to the darogah. This was in my presence. This was at 10 P. M. He also said that he had thrown down the anklets at the scene of the murder. As it was late at the time, he said he would point them out in the morning. On the 3rd October soon after sunrise, he repeated this statement, and conducted me, and the sub-inspector, and many other people, to the juar field where I had found the body, and there at 8 or 10 paces to the south from the place where it had been, and after a slight search, produced from under the leaves, which were strewed about, these anklets." Now the fact thus deposed to of Pancham giving up a knife to the darogah in presence of the witnesses as the weapon with which the murder was committed, is of course inadmissible as evidence against him proving a confession or admission of his guilt. But there are other things in this deposition which appear to me to be not only not excluded as evidence, but which come fairly within the meaning of section 27 of the Evidence Act, by which it is provided that "when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved." This deposition is evidence therefore against the accused as proving that, on the 2nd October he made a statement to the darogah and gave up a certaiu knife which he took out of his waist-belt; also as proving that he had thrown down the anklets at the scene of the murder: as it was late at the time, he said he would point them out in the morning; also as proving that soon after sunrise on the following morning the accused repeated his statement and conducted the witness and the sub-inspector and many other people to the juar field where the witness had found the body, and there at 8 or 10 paces to the south from the place where it had been, and after slight search, produced from under the leaves, which were strewed about, the anklets. The deposi-

tion then of this head constable, although not legal evidence of any confession, is I hold admissible as evidence of all the other circumstances referred to in it."..... I should add that on this subject of the exclusion or admissibility of confessions made to a police officer, nothing can be more unreasonable, and I may add unjust, than the hard and fast line that is often attempted to be drawn in this country. Section 25 of the Evidence Act no doubt provides that "no confession made to a police officer shall be proved against a person accused of any offence." Now if this be meant to apply to all statements, however voluntarily made to a police officer, nothing could be more impolitic or obstructive, and I trust that this provison is not to be understood in any absolute sense and under all circumstances whatever. It ought to be read and understood in connection with the other sections which follow it, particularly section 28, for taken by itself and applied indiscriminately it is simply irrational and absurd. Such a naked application of the section is also plainly opposed to the law of evidence as applied by the Courts in England, a good illustration of which is supplied by what is called Baldry's Case as referred to in Roscoe's Evidence in Criminal Cases 4th edition, by Power, 1858, p. 40. There we are told that "all the authorities upon this point (the prisoner's confession) were brought before the Court of Appeal in the argument of the prisoner's Counsel. The confession, which that Court unanimously held to have been rightly received in evidence at the trial, was made to the police constable, who, having apprehended the prisoner on a charge of murder, said to him that "he need not say anything to criminate himself, as what he did say would be taken down and used as evidence against him," and thereupon the prisoner made the confession. "In this country I daresay it might be fairly argued that such a confession as was made in Baldry's Case did not come within the implied exceptions to section 24, and was distinctly struck at by section 25, however unreasonably. But I have no doubt in my own mind that statements by police officers embodying and including what may be understood as a confession or admission of guilt by an accused person, are not wholly inadmissible, but may be received and applied so far as they prove merely corroborative circumstances and not an absolute confession of guilt."

STRAIGHT, J. (After discussing the facts and concurring in the conclusion arrived at on them by the Chief Justice, continued) :—I have only one other matter upon which to remark. The learned Chief Justice in the course of his judgment, no doubt having in his mind certain arguments used by the Counsel for the appellant at the hearing of the appeal, has made some remarks in reference to the admissibility of certain portions of the evidence of Rameshur Dayal, Imam Ali, and Hurde, which detailed statements made by the appellant with regard to the knife and the anklets. I need only remark that, in my opinion, those statements amounted to confessions ; that they were made to the police, that no fact was discovered in consequence of any information derived from such statements within the meaning of the proviso contained in section 27 of the Evidence Act; consequently I consider that the proof of them was wrongly received, in contravention of the prohibition of section 25 of the Evidence Act. As to the statement made by the appellant with respect to the knife, that is an obvious confession, and his remarks about the anklets bear a like construction.

But with regard to these latter, it is obvious that the anklets were not discovered in consequence of what he had said, for on the contrary the appellant himself went with the police and pointed out the spot where they were lying. In short it was by his own *act*, and not from any *information* given by him, that the discovery took place. It seems to me, that the obvious intention of the Legislature in passing the provisions contained in sections 25 and 26 of the Evidence Act, was to deter the police from extorting confessions by rendering such confessions absolutely inadmissible in proof, unless made in the immediate presence of a Magistrate. It is manifest that the prohibition laid down in these two sections must be strictly applied, and any relaxation of it in accordance with the proviso to section 27 should be sparingly admitted, and only to the extent, of so much of the accused's statement as directly and distinctly relates to the fact alleged to have been discovered in consequence of it."

Proceedings of 7th July, 1873. Weir, 258.

Act X of 1872 has not altered the law under which a confession before a head of a village was held to be admissible in evidence.

Arumgam & another, accused. Weir, 262.

The non-admission in evidence of a confession made to a village Magistrate, constitutes such material error as will justify the High Court in setting aside an acquittal.

Bhokuva & others. Weir, 262.

It is unsafe in India, to act upon uncorroborated confessions of accused persons.

Chinna Venkadu, 1st prisoner. Weir, 263.

A confession made before a Court other than a Court in British India, cannot be admitted in evidence even although it is certified in the manner provided in section 122 of the Code (X of 1872). To render such a confession admissible, it must be sworn to in the same manner as confessions made to private individuals.

Kamalagadu, petitioner. Weir, 357.

An omission to certify a confession in the manner provided in section 346, or to record the whole of the questions put to the accused, when the accused has not been prejudiced by the omission, is not such a material error as will justify the High Court in setting aside the conviction.

Queen-Empress v. Uzeer, 10 I. L. R. Calc. 775.

A Deputy Magistrate, before taking down a statement from a person brought before him by the police, noted on the paper on which he was about to take down the statement, the following words which, after excluding the police officers from his presence, he had verbally addressed to the accused; "After excluding from my presence the police officers, who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth." Held, that the use of such language was calculated to hold out an inducement

to the prisoner to confess, and that such a confession was therefore inadmissible in evidence against him.

Queen-Empress v. Bepin Biswas & others, 10 I. L. R. Calc. 970.

Confessions of prisoners are not, as against their fellow prisoners who were not present when the confessions were made, such corroborative evidence of the statement of an approver as would justify the conviction of the other prisoners thereon. Confessions of two of several accused persons made in the absence of the others are of no weight as against the latter.

Such confessions, as well as the statements of approvers, are always regarded as tainted; because, from the position occupied by the persons making them, they are not entitled to the same weight as the evidence of ordinary witnesses. An accused person is not bound to account for his movements at or about the time an offence was committed, unless, there has been given legal evidence sufficient *primâ facie* to convict him of the offence.

Empress v. Yakub Khan, 5 I. L. R. All. 253.

On a certain day a confession by an accused person was recorded by a Magistrate, and on the next day the same Magistrate, having jurisdiction to do so, examined the witnesses for the prosecution and eventually committed the accused. Held, following *Empress* v. *Anuntram Singh*, (I. L. R. 5 Calc. 954), that such confession, having been made to a Magistrate competent to hold, and who actually then was holding, an inquiry preliminary to committal, must be regarded as falling within section 193 of Act X of 1872, or section 342 of Act X of 1882, and as such governed by the reservations contained in section 346 of the former Act or section 364 of the latter.

Observations on sections 342 and 364 of Act X of 1882 (Criminal Procedure Code).

Queen Empress v. Mathews, 10 I. L. R. Calc. 1022.

A policeman on being cross-examined stated, that when he arrested the prisoner, the prisoner said to him, some Chinamen *at the time of the occurrence* came out with hatchets; in re-examination the policeman so far altered the words stated to have been used by the prisoner, as to substitute for the words *at the time of the occurrence* the words *at the time* and on being asked if the prisoner had explained "what time" answered, he said "at the time I struck the deceased."

Counsel for the prisoner interposed and objected to the evidence. The Standing Counsel contended that he was entitled to clear up a matter which had been left in doubt by the cross-examination. Held, that the evidence could not be given.

END OF PART II.

PART III.

CRIMINAL PROCEDURE.

ABSCONDING OFFENDERS.

Reg. v. Chumroo Roy, 7 S. W. R. Cr. R. 35 F. B.

Held, by the majority of the Court (SETON-KARR, J. dissenting) that sections 184 and 185 of the Code of Criminal Procedure (Act XXV of 1861) make no provision for any investigation by a Magistrate of the claims of third persons to property which has been attached. The claimants are not barred by the sale, and may bring a suit in the Civil Court against the purchasers to establish their rights.

Reg. v. Muddun Mohun Podar, 3 S. W. R. Cr. R. 34.

Sections 183 and 184 of the Code of Criminal Procedure (Act XXV of 1861) (proclamation and attachment of property of absconding parties) do not apply to offences punishable with imprisonment extending to 6 months only. There is no rule which requires a Magistrate to satisfy himself that a party has absconded before issuing a proclamation, but the party on suing to recover his property, may prove by evidence that he had not absconded.

Reg. v. Womesh Chunder Ghose, 5 S. W. R. Cr. R. 71.

Held, by the majority of the Court (*dissentiente* CAMPBELL, J.) that a warrant addressed to a police officer to apprehend an offender, and to bring him before the Magistrate, is not a "summons, notice, or order" within the meaning of section 172 of the Penal Code, and that the offence of absconding by an offender against whom a warrant has been so issued, is not punishable under that section.

Shewdyal Singh v. Sirban Singh, 6 S. W. R. Cr. R. 79.

Procedure by Magistrate before declaring a forfeiture of the property of an absconded offender.

Shewdyal Sing v. Griban Sing, 6 S. W. R. Cr. R. 73.

Before the passing of an order declaring the property of an accused person who cannot be found, to be at the disposal of the Government, there must be a proclamation under section 183, Code of Criminal Procedure, (Act XXV of 1861) specifying a time within which such person is required to appear. But before a Magistrate can issue such a proclamation, he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant.

Madhasurun Sing, petitioner, 9 S. W. R. Cr. R. 27.

The property of an accused who had absconded, having been attached after the usual proclamation, and made over to Government, it was held that under the circumstances of this case, it was not necessary, when the accused returned and applied for the property, that the Government should adduce evidence to prove that the accused had absconded, or that the legal formalities of the proclamation had been duly attended to, as the accused did not deny the attempt to arrest him, or the issue of the proclamation.

Hossein Manjee, prisoner, 9 S. W. R. Cr. R. 70.

Section 172 of the Penal Code applies to a *witness* who absconds to evade service of warrant issued under sections 188 to 190 of the Code of Criminal Procedure (Act XXV of 1861), while section 183 of the latter Code applies to a party who absconds.

Chunder Bhow Singh & others, in re, 17 S. W. R. Cr. R. 10.

The proper remedy of claimants to property attached as belonging to an absconding offender, is by a civil suit. The Court declined to quash such an attachment as made without observance of the due formalities, being of opinion that the plea of informality could be considered on the surrender of the fugitive, but cautioned the Magistrate against a sale until the needful formalities were carried out.

Government of Bengal in re, 9 B. L. R 342.

Where property of an absconding offender had been attached and declared to be at the disposal of Government under section 184 of the Criminal Procedure Code (Act XXV of 1861), and the offender was subsequently convicted under section 174 of the Penal Code, and such conviction was upheld on appeal, held, the High Court had no power to make any order with respect to such property. Where an order for the release of the property so attached had been obtained from the High Court on an *ex parte* application, and on an incorrect statement of facts, the High Court, on the application of the Government, cancelled such order.

Ramkishore Sein in re, 10 B. L. R. App. 14.

The facts of the case appear fully in the judgment of PHEAR, J. :—"In April 1871, the Magistrate of Maldah, after taking the deposition of one Heeralall Doss, issued a warrant of arrest, upon a charge of forgery, against five persons, including Ram Kishore Sein, the present petitioner. This warrant was infructuous; and on the 8th November, 6 months afterwards, the police officer charged with its execution, made a deposition before the Magistrate, upon which the Magistrate passed this order: 'It is ordered under sections 183 and 184 of Act VIII of 1869 that proclamation be issued calling on these five persons abovenamed to appear in my Court on or before 18th December 1871 and that all their moveable and immoveable property be attached under section 184.' On the same day, a proclamation was drawn up by the mohurrir of the Court, and signed by the Magistrate, requiring Ram Kishore Sein amongst others, to appear in the Magistrate's Court on the 10th December. (After referring to several endorsements which appeared on the proclamation, PHEAR, J. continues) :—This

somewhat remarkable set of endorsements constitutes all the existing evidence relative to the fact of publication of the proclamation. It refers, as far as I can gather, to publication at Khurba only; and is silent as to any sort of publication at Raipore, the place where the petitioner resides, and the place to which the proclamation itself described him as belonging. The petitioner did not surrender himself before the 10th December. But he did in fact surrender himself, together with two others of the five accused persons, on the 19th December. He was then committed to Hajut. Afterwards, from time to time the petitioner was brought up before the Magistrate, and as often remanded, although no evidence had been taken since the date on which the Magistrate originally issued the warrant of arrest. And this continued until the 27th April 1872, when the petitioner and the two other prisoners applied to the High Court for relief. A Division Bench, consisting of the CHIEF JUSTICE and AINSLIE, J. heard the matter, and the Chief Justice, in giving judgment, stated :—"There was not any evidence taken which could be made the foundation of a charge; and the Magistrate appears to have been influenced in the course which he took by the expectation that, after some time and by dint of enquiry some evidence might be obtained." The High Court, therefore, made the order that the last order of remand, namely, that of the 26th February, should be annulled. The consequence of this order was, I believe, that the petitioner and the others were discharged on the 18th May. In the July following, the petitioner applied to the Magistrate to have the order of attachment, which had been put upon his property, simultaneously with the issue of the proclamation on the 8th November removed. On that application the Magistrate said :—"Under all these circumstances I see no reason why the provision of the law as to this attached property, being at the disposal of Government, should not be carried out, and I order accordingly." It thus appears that, while the petitioner is a free man, with no charge in fact hanging over his head, simply because, as the Chief Justice phrased it, no evidence has been found to support the original charge made against him, yet as much of his property as could be got at by the Magistrate is, by an order passed by the Magistrate since the petitioner's own release, forfeited to Government. It seems to me that this certainly is a startling state of things, to say the least, and very strong grounds are needed in my judgment to prove that it is right. The Government pleader has urged upon us that we should not at this stage interfere in the matter, because it is still open to the petitioner to apply under section 185 of the Criminal Procedure Code to have the property restored to him. But as far as I understand the proceedings which have been taken, the application which he made in July last, to the Magistrate, was in fact an application to have the benefit of the provisions of that very section, and that application has been refused. Now on turning back to the commencement of these proceedings, I may take it as being at this time beyond contest that, in order to lay a sufficient foundation for the issue of a proclamation under section 183, and the accompanying order of attachment under section 184, the Magistrate must, upon some sufficient materials, find judicially (that is, by an exercise of judicial discretion applied to the consideration of that material) that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding the service of the warrant of arrest

previously issued against him. But in this case, according to the record which has been sent up to us, the Magistrate ordered the proclamation to issue without having previously come to any finding at all. We have in the official copy of documents laid before us merely a deposition of a certain Mohima Chunder Ghose, Court Inspector, followed immediately on the same paper by this order :—"It is ordered under sections 183 and 184 of Act VIII of 1869 that proclamation be issued calling on these five persons above named (that is I suppose. mentioned in the deposition) to appear in my Court on or before &c." It was distinctly held by NORMAN, J. in Shewdyal *v.* Griban Sing (6 S. W. R. Cr. 73 that "before the Magistrate can issue the written proclamation under section 183, and order the attachment of the property of an accused party who cannot be found, he must be satisfied that such person is absconding or concealing himself for the purpose of avoiding the service of the warrant. The Magistrate should have recorded in his proceedings whether or not he was so satisfied." I entirely take this view, and I think that, until the Magistrate had judicially found as a fact upon sufficient information, that the person against whom the proclamation is to issue, had absconded or concealed himself for the purpose of avoiding apprehension under the warrant, he had no authority to issue that proclamation. Not only is it the case that no such finding appears to have been come to by the Magistrate so far as this record speaks, but it seems to me that the deposition of the Court inspector, if stretched to the utmost, could not possibly in reason be made the ground of a conclusion that Ram Kishore Sein was in fact evading the service of the warrant ..... I think, however, it is right that I should throw out as my own opinion that the period of 30 days, which is prescribed in section 183 as the minimum period within which the person is to be required by the proclamation to appear, was intended by the Legislature to run from the date on which the publication in the mode prescribed by the same section should be effected, namely, by reading the proclamation publicly in some conspicuous place of the town or village in which such person usually resides, and by affixing it on some conspicuous part of the ordinary place of abode of such person, or on some conspicuous place, of such town or village. If this view be correct, then, in as much as we have certainly no evidence at all in this case as to when the proclamation was read in the town or village of Raipore, where, according to the proclamation itself, the petitioner usually resided, or when it was affixed on some conspicuous part of his ordinary place of abode, it would be impossible for us to infer that he did not, by coming in on the 19th December, come in within 30 days from the date of publication of the proclamation if duly effected in that manner, *i. e.*, within the 30 days as limited by the Act. The Magistrate seems to think that the 30 days should be counted from the date of issuing the proclamation. If this were so, then as Mr. Woodroffe very rightly pointed out, the proclamation might get into the hands of some subordinate Court officer, or, even going further than this, into the hands of some local officer for the purpose of being published according to the terms of section 183, and yet might not in fact become published at all within the period of 30 days . . . . . I will further add that the inclination of my opinion is, that the declaration of forfeiture directed to be made in section 184, was intended to be in furtherance of a matter of procedure, and not simply as a mode of punishment

for contempt of process; and in this view I think that, if it is not made before the person affected by the proclamation has come in, or has been brought in, it ought not to be made at all. Because by that time its purpose has been effected, though even possibly by other means than that of the process which was evaded ..... It seems to me very clear, however, that the attachment and order under section 184 have been made without sufficient ground in law, and must be set aside."

Reg. v. Zahoor Ali, Khan, 4 N. W. P. Rep. All. 97.

A warrant addressed to a Nazir by a Civil Court for the arrest of a defendant in execution of a decree, is not a notice, summons, or order, within the meaning of section 172 of the Penal Code.

Reg. v. Huttoowa, 3 N. W. P. Rep. All. 2.

Where an accused person was arrested as an absconded offender, and without evidence being gone into on that charge, an enquiry was made into his mode of livelihood, without any summons being issued under section 306 of the Criminal Procedure Code, (Act XXV of 1861) such proceedings were held to be irregular.

Reg. v. Amir Jan, 7 N. W. P. Rep. All. 302.

Absconding, by a person against whom a warrant has been issued, must be dealt with in the manner provided by law under the Code of Criminal Procedure (Act X of 1872), and not under section 172 of the Indian Penal Code.

Proceedings of 12th May 1869. 4 Mad. Rep. Rul. 48.

The words "order the attachment of any moveable or immoveable property" in section 184 of the Criminal Procedure Code (Act XXV of 1861) are enabling and not restrictive, and the Magistrate may attach both kinds of property. But he must issue his warrant of attachment simultaneously with the proclamation if he resorts to attachment at all.

Ghurbin Bind v. Queen-Empress, 10 I. L. R. Calc. 1097.

Where an accused person has absconded, and it is intended to record evidence against him in his absence, it is requisite, under section 512 of the Code of Criminal Procedure (Act X of 1882), that the fact of the absconding of the accused should be alleged, tried, and established, before the deposition is recorded.

ACQUITTAL.

Reg. v. Chunder Kant Chuckerbutty, 1 B. L. R. A. Cr. 8; S. C. 10 S. W. R. Cr. R. 14.

The High Court sitting as a Court of of Revision, cannot interfere to set aside a verdict of acquittal by a jury, on the ground of misdirection by the Judge.

Reg. v. Sheikh Baju & others, 8 S. W. R. Cr. R. 47. S. C. B. L. R. Sup. Vol. 750 F. B.

An express finding by the Sessions Judge, that the case does not fall under any of the clauses of section 300, is tantamount to an acquittal of murder; and after such an acquittal, the High Court cannot either as a Court of Appeal, or a Court Revision, look at the evidence for the purpose of reversing the acquittal, and of convicting the prisoner of murder.

Reg. v. Sreenath Mookhopadhya & others, 7 S. W. R. Cr. R. 45.

A Magistrate cannot decide the case of a prosecutor without examining his witnesses. If, upon such trial, he finds that the prosecutor has no right to bring a criminal charge he should acquit the prisoner on that ground.

Reg. v. Wahed Ali, 13 S. W. R. Cr. R. 42.

Where a prisoner is released by a Court of Sessions on the ground that the proceedings had in his case, were illegal and irregular, there is no bar under section 55 of the Code of Criminal Procedure (Act XXV of 1861) to his being subsequently tried and convicted of the same offence.

Haree Bundhoo Santra, petitioner, 5 S. W. R. Cr. R. 55.

Where a prisoner is acquitted of the offence charged, the Court ought not to order the property in respect of which the offence was charged to be given to the prosecutor.

Kaptan v. Smith, 16 S. W. R. Cr. R. 3; S. C. 7 B. L. R. Ap. 25.

A person tried and acquitted on a charge of using criminal force under section 352 (which includes the offence of battery), cannot be tried in respect of the same criminal matter, on a charge of hurt.

Ramjoy Surmah & others v. Mirza Ali, 18 S. W. R. Cr. R. 10.

The order for the release of the accused as *nirdosh* (guiltless) was held to be an acquittal, and not a discharge, and therefore to have exempted them from a second trial for the same offence.

Suchi Behara v. Nityanund Doss & others, 19 S. W. R. Cr. R. 55.

The withdrawal of a complaint by the complainant, operates as are acquittal, and the High Court has no authority to entertain the matter at all, except upon an application duly made with sanction of the Government.

Okhoy Teli v. Modhoo Sheikh & others, 19 S. W. R. Cr. R. 55.

When a Magistrate, having called on the prisoners for their defence, takes the evidence of a witness and finally acquits them of the charge, the High Court has no power to interfere upon a reference made to it under section 296, Act X of 1872.

Reg. v. Sidham Sircar, 20 S. W. R. Cr. R. 16.

The High Court acting under section 263 of the Code of Criminal Procedure, convicted the accused in this case on the facts, notwithstanding the verdict of acquittal come to by the jury.

Government of Bengal v. Gokool Chunder Chowdhry, 24 S. W. R. Cr. R. 41.

The words "appellate judgment of acquittal" in Act X of 1872, section 272 were meant to include all judgments of an Appellate Court by which a conviction is set aside.

Reg. v. Ridhoy Patro, 26 S. W. R. Cr. R. 1.

Where an accused person had been charged with the murder of a woman whom he was proved to have attempted to take away from her husband; and the assessors who had heard the case with the Judge found him guilty; but the Judge, without any evidence to support his hypothesis, had thrown out the supposition that the accused was the victim of a conspiracy, and acquitted him; and the Local Government appealed from the sentence of acquittal: Found by the High Court, that there was no evidence in support of the Judge's suppositions of the innocence of the accused; and held that his wrongful acquittal by the Judge, could not stand between him and the sentence of death which was the punishment for his offence. The accused was accordingly sentenced to be hanged.

Reg. v. Koonjo Leth & others, 11 B. L. R. 14; S. C. 20 S. W. R. Cr. R. 1.

On a trial by jury before a Sessions Judge, the jury returned a verdict of guilty. The Judge disagreed with the verdict, and submitted the case to the High Court. Held, that the High Court had power to set aside the verdict of the jury, and to direct an acquittal. Section 263 of the Criminal Procedure Code (Act X of 1872) explained. Conviction set aside except with regard to Koonjo Leth.

Reg. v. Hatu Khan, 12 B. L. R. App. 22.

In this case, in which the accused was charged under sections 141, 441, and 352 of the Penal Code, the Deputy Magistrate, after hearing two of the prosecutor's witnesses only, and without taking the evidence of the remaining witnesses named by the prosecutor, two of whom at least were present at the trial, and without examining the prosecutor himself in the presence of the accused, passed a judgment of acquittal under section 211 of the Criminal Procedure Code. The Magistrate, being of opinion that such judgment was illegal, reported the case, and forwarded the record thereof, to the High Court under section 296 of the Criminal Procedure Code, with a request that that Court would pass "an order directing the retrial of the accused with observance of the proper procedure." MARKBY, J.:—We do not think that we have power to do what the officiating Magistrate asks, namely, to set aside the acquittal of the prisoner, and to direct a retrial. The proceedings of the Deputy Magistrate were undoubtedly illegal, but they have resulted in the acquittal of the prisoner, and we are not empowered by the Criminal Procedure Code to interfere when a prisoner has been improperly acquitted. If a prisoner has been improperly discharged, we may order him to be tried, or to be committed for trial, under the second clause of section 297. If the Legislature had also intended us to interfere when the prisoner was acquitted, it would undoubtedly have been so expressed in that clause."

Corporation of Calc. v. Bheecunram Napit alias Bheecun Napit, 2 I. L. R. Calc. 290.

The powers of interference given to the High Court by section 147 of the High Court's Criminal Procedure Act (X of 1875), were not intended to be exercised in the case of an acquittal by the Magistrate, but only in the case of convictions or other orders, whereby a defendant is aggrieved or injured.

Municipal Committee of Dacca v. Hingoo Raj, 8 I. L. R. Calc. 895.

The High Court, as a Court of Revision, will not interfere with an order of acquittal.

Jadubar Mookerjee in re, 5 C. L. R. 359.

An order dismissing a complaint under section 220 of the Code of Criminal Procedure (Act X of 1872) amounts to an acquittal.

Empress v. Chedi Rai, 7 C. L. R. 142.

It is not the practice of the High Court to interfere by way of revision, under section 297 of the Code of Criminal Procedure (Act X of 1872), with an acquittal against which the Government may appeal.

Narain Das in re, 1 I. L. R. All. 610.

Held, where without asking the opinion of the assessors, a Court of Session acquitted an accused person, after his defence had been heard, that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was, with reference to the provisions of sections 283 and 300 of Act X of 1872, a ground for revisional interference.

Hardeo in re, I. L. R. All. 139.

The High Court is not precluded by a judgment of acquittal, from exercising its powers of revision under section 297, Act X of 1872. Reg. *v.* Biseshar Pandey (H. C. R. N. W. P. 1874, p. 357) observed upon.

Per TURNER and SPANKIE, JJ.:—Such powers can only be exercised where the judgment of acquittal has proceeded on an error of law, and not where it has proceeded on an error of fact.

Sukho v. Durga Prasad & others, 2 I. L. R. All. 448.

A private prosecutor can move the High Court, in the case of an acquittal, to exercise its powers of revision under sections 297 of Act X of 1872.

Empress v. Gurdu & another, 3 I. L. R. All. 129.

A Magistrate tried and acquitted a person accused of an offence, without preparing in writing a charge against him. Such omission did not occasion any failure of justice. Held, with reference to section 216 of Act X of 1872 Explanation I, that such omission did not invalidate the order of acquittal of such person, and render such order equivalent to an order of discharge, and such order was a bar to the revival of the prosecution of such person for the same offence.

Reg. v. Bisheshar Pandey & others, 6 N. W. P. Rep. All. 357.

The Court has no power to disturb an acquittal, save on the appeal of Government. The provisions of section 297 of Act X of 1872, only permit the Court to interfere, when an accused person has been discharged without being put on his trial.

Reg. v. Panna & others, 7 N. W. P. Rep. All. 371.

K. P. M. N. and O. appellants, were convicted by the Court of Session of attempt at murder. They had previously been tried by a Deputy Magistrate, on a charge of voluntarily causing grievous hurt founded on the same facts, and K. P. and M. were then acquitted, while N. and O. were convicted. N. and O. appealed to the Court of Session, and that Court, considering that the evidence showed that they had been guilty of an attempt at murder, forwarded the record to the High Court, when the conviction was quashed, and a new trial ordered. The order referred expressly only to N. and O., but proceedings were commenced *de novo* against all the five persons, and they were committed to the Court of Session for trial on a charge of attempt at murder, and convicted, as stated above, by that Court. The pleas of *autrefois convict* and *autrefois acquit* could not be urged as an answer to the charge on which the appellants were convicted by any of them.

Empress v. Miyaji Ahmed, 3 I. L. R. Bom. 150.

The High Court cannot under Act X of 1872, interfere with an improper acquittal, except on an appeal by the Government.

Proceedings of 26th July 1869, 4 Mad. Rep. Rul. 60.

Where a subordinate Magistrate of the 1st Class, acting without jurisdiction, held a trial and acquitted the accused person under section 255 of the Code of Criminal Procedure (Act XXV of 1861), held that the High Court alone could set aside the finding under section 404, and that the Magistrate of the District had no power to do so under section 435 of the Code as amended by Act VIII of 1869.

Proceedings of 30th Oct. 1869, 5 Mad. Rep. Rul. 2.

A prisoner is entitled to be discharged from custody immediately on the judgment of acquittal being pronounced, and no formal warrant is necessary.

Reg. v. Parvati, 7 Bom. Rep. Crown Cases, 82.

When a judgment of acquittal is recorded, it is not necessary to record the opinions of the assessors.

Reg. v. Venku Narsa, 9 Bom. Rep. 170.

After an accused person has been acquitted under section 255 of the Code of Criminal Procedure (Act XXV of 1861), it is not competent to the Session Judge to interfere under section 435 of the same Act.

Govt. v. Dowlut, 2 N. W. P. Rep. (Agra) Criml. 3.

Where the accused was once acquitted of the offence, he was not liable to be tried again for the same offence, and the second conviction was therefore under section 55, Act XXV of 1861, illegal.

Toyab Shaikh, Appellant, 1 Ind. Jur. N. S. 87.

When a prisoner is charged upon two counts, one for murder, and the other for culpable homicide not amounting to murder, and found guilty on the 2nd count, it will operate as an acquittal on the first, and the Court of Revision will not interfere.

Govt. of Bengal v. Haneef Fakeer, 23 S W. R. Cr. R. 50.

In a case tried by assessors, in which the accused was charged with culpable homicide not amounting to murder, he was acquitted by the Sessions Judge and one of the assessors, while the other assessor was for a conviction. The Government of Bengal having appealed under section 272, Code of Criminal Procedure (Act X of 1872), the High Court, on a consideration of the evidence, set aside the order of acquittal, and convicted the accused of the offence charged.

APPEAL.

Reg. v. Golam Hossein Chowdhry, 2 Ind. Jur. N. S. 88; S. C. 7 S W. R. Cr. R. 10.

Held, (MARBY, J. dissenting) that no appeal lies from the order of a Magistrate under section 316 of Act XXV of 1861 directing a man to pay a monthly allowance for the support of his illegitimate child.

Reg. v. Gopal Doss, 2 S. W. R. Cr. R. 5.

The pleas that the prosecutor is at feud with the prisoner, and the prisoner's confession was given at the instance of the police, are not grounds of appeal.

Reg. v. Grish Chunder Bundoo, 6 S. W. R. Cr. R. 1.

A person tried by a jury, is entitled to an appeal on the facts, if the offence was committed before the passing of the Penal Code.

Reg. v. Hullodhur Ghose & others, 5 S. W. R. Cr. R. 40.

An appeal preferred out of time, and without any explanation of the delay, may be rejected at once, under section 415 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Boydonath Mookerjee, 17 S. W. R. Cr. R. 11.

No appeal lies to the High Court, under Act XXXVII of 1865, from a conviction by the Deputy Commissioner of the Sonthal Pergunnahs.

Reg. v. Dhona Bhooya, 5 B. L. R. 658; S. C. 14 S. W. R. Cr. R. 33.

The right of appeal to the High Court, given by section 445 C. of the Criminal Procedure Code (Act VIII of 1869), to persons convicted on a trial held by an officer invested with the power described in section 445 A., is confined to cases in which the officer has exercised that power.

Reg. v. Gopaul Bhereewallah, 1 S. W. R. Cr. R. 21.

In a case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.

Reg. v. Kajun Thakoor, 2 B. L. R. F. B. 25.

When a criminal appeal is heard by two Judges, sitting as a Division Court, and they differ in opinion, the opinion of the Senior Judge must prevail under section 36 of the Letters Patent of the High Court of 1865; notwithstanding section 420 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Kurmoo Koormee, 5 S. W. R. Cr. R. 52.

Where a Sessions Judge and assessors find a prisoner guilty on his own plea, there is no ground of appeal.

Reg. v. Moheshchunder Chuttopadhia & others, 2 S. W. R. Cr. R. 13.

The Assistant Magistrate having decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge on appeal, ordered the evidence of those witnesses to be taken by the Assistant Magistrate. Their depositions having been returned to him, the Sessions Judge proceeded to deal with the case under section 422 of the Code of Criminal Procedure (Act XXV of 1861) and, convicting all the prisoners, confirmed the judgment and sentence passed by the Assistant Magistrate. Held, that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that, under section 408 an appeal lay from it to the High Court upon the merits. With reference to the evidence and probabilities of the case, the majority of the Court (*dissentiente* NORMAN, C. J.) acquitted the prisoners.

Reg. v. Mudhoo Dutt, 14 S. W. R. Cr. R. 71.

No appeal lies to a Sessions Judge from the order of a Magistrate fining a defaulter under section 25 of the Income Tax Act, IX of 1869.

Reg. v. Nagardi Paramanick, 1 B. L. R. A. C. 3; S. C. 10 S. W. R. Cr. R. 3.

A. was convicted of offences under sections 143, 447, and 211 of the Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence. Held, that, under section 411 of Act XXV of 1861, there was no appeal. The separate sentences could not be taken together, and combined into one sentence, so as to give a right of appeal.

Reg. v. Nussurooddeen Shazwal, 11 S. W. R. Cr. R. 24.

Where an appeal is preferred to a Sessions Judge from the order of a Magistrate which he considers illegal, the Sessions Judge should himself deal with the case, instead of referring it to the High Court under section 434 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Poorno Chunder Doss, 8 S. W. R. Cr. R. 59.

No appeal upon the merits can be entertained from a conviction which was based on no legal evidence, and which was absolutely bad in law.

Reg. v. Sreemutty Surno, 4 S. W. R. Cr. R. 31.

Petitions of appeal to the High Court must be presented within 60 days.

Thakoor Doss v. Godai Sheik, 5 S. W. R. Cr. R. 22.

Convictions under the Police Act, V of 1861, are appealable like other convictions. Where the appellants are convicted by an officer exercising the powers of a Magistrate, and sentenced to imprisonment exceeding the limit prescribed by section 411 of the Code of Criminal Procedure (Act XXV of 1861) the appeal lies to the Sessions Court.

Dhanobar Ghose in re, 6 B. L. R. 483; S. C. 15 S. W. R. Cr. R. 33.

Upon an appeal from a sentence passed by a Magistrate, the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. Such evidence having been taken by the Magistrate, the case was returned to the Appellate Court. The Sessions Judge then disposed of the case in the manner prescribed by section 419 of the Criminal Procedure Code. On an application by the prisoner to the High Court to be allowed to appeal on the merits of the case under section 408, Act XXV of 1861. Held, no appeal lay to the High Court on the merits.

Contra Mohesh Chunder Chattapadya (2 S. W. R. Cr. R. 13).

Punchanun Biswas, 5 S. W. R. Cr. R. 56.

A Sessions Judge is quite competent on appeal to reverse a conviction by a Deputy Magistrate, if he thinks that the evidence is insufficient to establish a criminal offence against the prisoner.

Ramchunder Mundle, Appellant, 9 S. W. R. Cr. R. 19.

Copies of judgments should be made out at once without waiting for written application from persons under sentence.

Ramjee Doss v. Meeajan Sheikh & others, 9 S. W. R. Cr. R. 65.

A Sessions Judge in trying an appeal has to look to the offence, as charged, of which the accused has been been found guilty, and to determine whether it is proved or not. He has nothing to do with the form the offence may take owing to subsequent events. A conviction for an offence for which the accused was tried will not prevent his conviction if guilty, of another distinct offence subsequently committed.

Nitto Gopal Paulit & others, Appellants, 13 S. W. R. Cr. R. 69.

Every facility should be allowed to prisoners to enable them to prepare their petition of appeal.

Gour Mohun Ghose v. Mohindro Nath Chatterjee, 13 S. W. R. Cr. R. 78.

An accused charged with voluntarily causing hurt and with abetment of that offence, was acquitted by the Magistrate of the former offence, and convicted of the latter. On appeal to the Sessions Judge, that officer, professing to act under section 426 of the Code of Criminal Procedure (Act XXV of 1861), convicted the accused of causing hurt and acquitted him of the abetment.

Semble (PHEAR, J.) that section 426 is in its terms confined in its operation to a case where error or defect, either in the charge or in the proceedings is the foundation on which the alteration of the finding or sentence is brought; and the finding a prisoner guilty, without evidence upon one charge, and acquitting him of another charge, against which the evidence is really directed, is not an error or defect in the charge or proceedings.

Held (by MITTER, J.) that as the prisoner appealed to the Sessions Judge on the ground that the evidence did not warrant his conviction, and not on the ground of any error or defect in the charge or proceedings, section 426 did not apply, and the Sessions Judge was not competent under that section to convict the prisoner of an offence of which he had been acquitted by the Magistrate. Held (by PHEAR, J.) on a consideration of the evidence that there was not sufficient evidence on the record to support the conviction of the accused on either of the charges laid against him.

Quære (by MITTER, J.) Whether the High Court, sitting as a Court of Revision under section 404 of the Code of Criminal Procedure, can enter into the question whether the view of the evidence taken by the Lower Appellate Court is correct or not.

Luntro Sing & others, 14 S. W. R. Cr. R. 18.

An appeal from a sentence passed by an officer in a Non-Regulation district invested with the powers mentioned in section 445 A., Act VIII of 1869, lies under section 445 C. to the High Court only.

Boron Dhoom, 16 S. W. R. Cr. R. 1.

A Deputy Commissioner in a Non-Regulation Province, comes under section 14 of the Code of Criminal Procedure (Act XXV of 1861), under the designation of Magistrate of the District, and is competent to decide upon an appeal preferred under section 412 from an order of a Subordinate Magis-

trate, who has exercised jurisdiction in a case in which he had no jurisdiction.

Shitaram v. Ramanund, 16 S. W. R. Cr. R. 56.

There is no right of appeal from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance under section 308 of the Code of Criminal Procedure (Act XXV of 1861), was reasonable and proper. Such decision of the jury is not a judicial proceeding, with which the High Court can interfere under section 404.

Mukta Bibee, Case of, 17 S. W. R. Cr. R. 11.

There is no appeal from a conviction under section 11, Act XIV of 1868 for a registered prostitute neglecting to appear for examination.

Reg. v. Jaffir Ali & others, 19 S. W. R. Cr. R. 57.

By section 297 of the Criminal Procedure Code (Act X of 1872) the Court can deal with the case of a prisoner who does not appeal, and is authorized to pass such "order" sentence, or judgment as it thinks fit.

Reg. v. Roghoo Dome & others, 24 S. W. R. Cr. R. 12.

No right of appeal lies from the order of a Session Court, fixing a period of detention under Act X of 1872 section 508, for an accused party refusing to furnish security.

Akool Sircar v. Partama, 24 S. W. R. Cr. R. 29.

When the Appellate Court rejects an appeal under Act X of 1872, section 278, it is prohibited by Act XI of 1874, section 26, from enhancing the sentence.

Reg. v. Chandra Jugi, 9 B. L. R. 6; S. C. 17 S. W. R. Cr. R. 47.

A Judge of the High Court sitting alone on the appellate side, has the power to hear and dispose of appeals in criminal cases.

Reg. v. Kheraj Mullah & another, 11 B. L. R. 33; S. C. 20 S. W. R. Cr. R. 13.

If on appeal from a summary trial under chapter XVIII of the Criminal Procedure Code (Act X of 1872), the evidence before the Judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, he ought to acquit him.

Empress v. Jyadulla, 2 I. L. R. Calc. 436 F. B.

An appeal by the local Government under section 272, Criminal Procedure Code (Act X of 1872), is within time if presented within 6 months from the date of acquittal. The sixty days' rule does not apply.

Empress v. Judoonath Gangooly, 2 I. L. R. Calc. 273.

On the trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under section 263 of the Criminal Procedure Code (Act X of 1872). The Local Government thereupon directed the Legal Remembrancer to appeal under section 272 of the Code, and in pursuance of this direction an appeal was preferred by the junior Government pleader. Held, that the appeal was duly made. Held further, that a judgment passed by the Court of Session, following the verdict of a jury acquitting the prisoner, is a judgment of acquittal within the meaning of section 272. Held also, that there being an acquittal on the charge of murder, the appeal lay.

Rajcoomar Singh & another v. Dinonath Ghuttuck, 1 C. L. R. 352.

Where there is the right of appeal provided by law, the High Court will not exercise its extraordinary powers under section 15 of the High Court's Act, all other remedies provided by law must be first exhausted.

Empress v. Haradhan Tamuli, 3 C. L. R. 511.

Where a person is charged with two separate offences in one trial, the amount of the whole punishment awarded for the two offences, must be regarded as one sentence, for the purpose of determining whether an appeal lies under section 273 of the Code of Criminal Procedure or not (Act X of 1872).

Empress v. Nadua, 2 I. L. R. All. 53.

Quære :—Whether, where a person has been convicted by a Deputy Commissioner invested under section 36 of Act X of 1872, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to which such Deputy Commissioner is subordinate, and such sentence has been confirmed accordingly, an appeal lies to the High Court against such conviction and sentence.

Reference No. 271, dated 4th May, 1869, 1 N. W. P. Rep. (All.) 302.

Section 411 of the Criminal Procedure Code (Act XXV of 1861) must be construed strictly, and will apply to cases in which either imprisonment or fine has been awarded by the sentence, and not to cases in which both punishments are awarded by one sentence.

Bulwunt Rai in re, 6 N. W. P. Rep. (All.) 124.

No appeal lies to the District Judge from an order of a subordinate Court according sanction to the entertainment of a complaint in cases in which such sanction is required by sections 468 and 469 of Act X of 1872. The District Judge having reversed in appeal the order of the Subordinate Judge sanctioning the prosecution of the defendant in a suit in his Court, for an alleged false statement, the High Court set aside the Judge's order under the provisions of section 35 of Act XXIII of 1861.

Reg. v. Gunesh Pershad in re, 3 N. W. P. Rep. (All.) 200.

No appeal lies from an award of compensation passed under section 22, Cap 5, Act I of 1871.

Subba Aitala & another in re, 1 I. L. R. Mad. 304.

A petition of appeal in a criminal case may be presented to the Appellate Court, by any person authorized by the appellant to present it.

Malan v. The Queen, 5 I. L. R. Mad. 11.

A general notice posted in a Sessions Court-house, that appeals will be heard for admission, only on the first Court day after the date of presentation of the appeal, is not a compliance with the requirement of section 278 of the Code of Criminal Procedure (Act X of 1872), *viz.*, that a reasonable time shall be fixed within which the appellant, his Counsel, or agent, may appear and be heard in support of the appeal.

Imperatrix v. Dougaji Andaji, 2 I. L. R. Bom. 564.

The Code of Criminal Procedure gives no right to the heir, devisee, executor, or any other representative of a deceased convict, to lodge an appeal, or continue and prosecute an appeal already lodged. (KEMBALL, J. *diss.*). The appeal lodged by a convict abates on his death.

The High Court, nevertheless, may call for and examine the record of the case, with a view to revision and rectification, and may make such order thereon as it may consider just.

Empress v. Mahomed Yashin, 4 I. L. R. Bom. 101.

An order under section 278 of the Code of Criminal Procedure (Act X of 1872) by the Appellate Court, rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings of the case, is a final order falling within the scope of section 285 and is not subject to revision.

Empress v. Jafarin Talab, 5 I. L. R. Bom. 85.

Where a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal, and therefore also the sentence, does not lie according to the provisions of section 167 of the Presidency Magistrate's Act, No. IV of 1877, albeit that the Magistrate has sentenced the person to imprisonment for a term exceeding six months, or to a fine exceeding two hundred rupees.

Imperatrix v. Shivaram Gundo, 6 I. L. R. Bom. 14.

An appellant in a criminal case has a right to appear and be heard by a mukhtyar.

A Sessions Judge is bound to allow a prisoner, whose conviction he has confirmed, to execute a vakalatnama to appeal.

Reg. v. Vaiyapuri Gaundam, 1 Mad. Rep. 4.

An appeal lies against an order of the Session Court, imposing a fine upon a witness under section 228 of the Penal Code, for intentional insult to the Session Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge, the order was set aside.

Chappu Menon, Appellant, 4 Mad. Rep. 146.

In computing the time during which it is competent to a defendant to appeal against the sentence of a Magistrate, the number of days taken by the Court to prepare a copy of the sentence should be omitted.

Toti Chengan, petitioner, 6 Mad. Rep. 349.

In disposing of an appeal, the Magistrate at first reversed the Sub-Magistrate's decision and directed the release of the appellant; subsequently he recalled this order, and confirmed the Sub-Magistrate's decision. Held, that the second order of the Magistrate ought to be set aside, and the original order restored.

Proceedings of 8th Dec. 1870, 6 Mad. Rep. Rul. 8.

Where the Session Judge might upon appeal, have convicted the defendants under a different section of an Act from that under which they were convicted by the Magistrate, but instead of doing so, he acquitted them. Held, upon appeal by the Local Government, that it was not a case which called for the interference of the High Court.

Government Pleader, Appellant, 7 Mad. Rep 339.

When the appeal from an order of a 1st Class Magistrate lies to the District Magistrate (as in the case of orders passed under section 504 of the Criminal Procedure Code (Act X of 1872) the copy of the order should be sent to him, and not to the Sessions Judge.

Proceedings of 14th July 1873, 7 Mad. Rep. Rul. 23.

When a criminal appeal has been rejected without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of the Appellate Court, that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to re-hear the appeal on its merits.

Proceedings of 7th Nov. 1873, 7 Mad. Rep. Rul 29.

In criminal cases, a complainant cannot claim, as to right, to be heard as a respondent in appeal. The matter is, in each case, in the discretion of the Court.

Proceedings of 6th Nov. 1874, 7 Mad. Rep. Rul. 42.

Proceedings of 4th March, 1875. 8 Mad. Rep. Rul. 8.

Five persons were convicted of mischief. One prisoner appealed. Notice to attend the hearing of the appeal was sent to all five, of whom only three attended. The Head Assistant Magistrate, however, enhanced the sentence passed on all. Held, that the enhanced sentence passed on the prisoners who did not appear, and who disclaimed all intention of appealing, must be annulled.

Reg. v. Bhaskar K. Kharkar, 3 Bom. Rep. Crown Cases, 1.

There is no appeal to the Court of Session from an order made by a Magistrate under section 409 of the Criminal Procedure Code (Act XXV of 1861), requiring a penal recognizance to keep the peace under section 280. The Court of Session may, however, in such case, under section 434 of the Code, call for, and examine the record of the Court below; and, if it shall be of opinion that the order of the Magistrate is contrary to law, refer the proceedings for the orders of the High Court.

Reg. v. Shankar Venkaji & another, 3 Bom. Rep. Crown Cases, 15.

Held, that no appeal lies where the sentence of imprisonment and of further imprisonment in default of payment of a fine does not, in the aggregate, exceed the term of one month.

Reg. v. Bhaishankar Hariram, 3 Bom. Rep. Crown Cases, 18.

Government may, by proclamation, declare and direct that an Assistant Collector in charge of the Collectorate, during the absence of the Collector, shall be, during that period, "the chief officer charged with the executive administration of the District in criminal matters;" and such officer being, within the meaning of section 14 of the Criminal Procedure Code (Act XXV of 1861) "the Magistrate of the District," may hear appeals from Subordinate Magistrates, under section 412 of the Code.

Reg. v. Umtha Rugnath, 5 Bom. Rep. Crown Cases, 8.

Held, that the power conferred upon the Magistrate F. P. at Broach to hear appeals, does not exclude the jurisdiction which the Magistrate of the District has by law, and that the proceedings in any case, in which a prisoner has appealed from the decision of a Subordinate Magistrate to the District Magistrate, must be forwarded to the latter.

Reg. v. Malhari Lauji & others, 6 Bom. Rep. Crown Cases, 45.

An appeal lies from the summary determination of the Magistrate of a zillah under section 16 of Act XXXV of 1850 (An Act for regulating the Bombay Ferries) to the Session Judge. Such appeal need not be preferred within eight days under section 14 of Reg. XIX of 1827.

Reg. v. Ramswami Mudliar, 6 Bom. Rep. Crown Cases, 47.

Appeals from convictions on trials by jury, where illegal evidence has been admitted, should be dealt with on the same principles as appeals in which there has been a misdirection by the Judge, or an omission on his part to give the jury proper direction. The Appellate Court,

where it finds that illegal evidence has been admitted, should consider whether it is such as is likely to have exercised a prejudicial influence on the minds of the jury, and if the Court be of opinion that it is so, it will treat the case as if it had been tried by a Session Judge with the aid of assessors. If the evidence, (after omitting that portion of it which should not have been admitted) is sufficient to sustain the verdict, the conviction will be upheld. In exceptional cases, where the evidence is of such a character as to suggest the consideration that its real value cannot fairly be appreciated, except by a Court which has heard that evidence given, a new trial will be directed.

Reg. v. Nantamram Uttamram, 6 Bom. Rep. Crown Cases, 64.

When an Appellate Court, under section 422 of the Code of Criminal Procedure (Act XXV of 1861) directs a Court of first instance to take additional evidence, an appeal on the merits to the High Court is not thereby given.

Reg. v. Kalubhai Meghabhai & others, 7 Bom. Rep. Crown Cases, 35.

Where several persons were tried together and convicted, under section 147 of the Indian Penal Code, of rioting, and two of them were sentenced to pay each a fine of Rs. 50, or in default of payment, to undergo rigorous imprisonment for a month, and the others were sentenced to a severer punishment, the Session Judge entertained an appeal by all the prisoners, being of opinion, that the test, under section 411 of the Code of Criminal Procedure (Act XXV of 1861) as to whether a case is appealable, is the maximum sentence passed in it :— The High Court annulled the order of the Session Judge passed with reference to those of the accused who had been only fined Rs. 50, and restored the original sentences passed upon them.

Reg. v. Reay, 7 Bom. Rep Crown Cases, 77.

The High Court has no power, under Cl. 41 of the Amended Letters Patent of 1865, to grant leave to appeal to Her Majesty in Council from an order made, or decision given, in a criminal case referred by a Magistrate under section 404 of the Code of Criminal Procedure (Act XXV of 1861).

Reg v. Pestanji Dinsha & another, 10 Bom. Rep. 75.

In criminal cases, the High Court will not, in general, grant leave to appeal to the Privy Council, unless some important question of law or practice, or jurisdiction is involved. Considerations that guide the Court in granting leave to appeal in such cases, stated, and instances in which such leave has been granted, mentioned.

Reg. v. Dorabji Balabhai & others in re, 11 Bom. Rep. 117.

Under section 272 of the Code of Criminal Procedure (Act X of 1872), as amended by section 23 of Act XI of 1874 an appeal against an acquittal presented by the Government six months after the date of the judgment complained of, is barred by lapse of time, even though the six months expired on the day the amending Act became law.

The amended section 272 should be read by itself, and not as a clause

of the ordinary Statute of Limitations. The Court will not, under section 297 of the Code of Criminal Procedure, interfere with an acquittal.

Reg. v. Gulam Abas, 12 Bom. Rep. 147.

For purposes of appeal, the whole punishment awarded to one person on one trial for several instances of the same offence, is to be regarded as one sentence.

Semble, that where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head, Held, that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court.

Reg. v. Moorali Kinkur Mookerjee, 3 S. W. R. Cr. R. 57.

Although a Sessions Judge cannot release a prisoner on bail pending an appeal, he may suspend the sentence pending the appeal.

Reg. v. Muddun Sirdar, 2 S. W. R. Cr. R. 3.

Objections to the sufficiency of evidence, are not a ground of appeal. The deposition of a single credible witness is sufficient in law.

Chundernath Deb & others, petitioners in re, 5 C. L. R. 372.

A petition of appeal presented for admission may be withdrawn.

Dwarkanath Manjhee & others in re, 6 C. L. R. 427.

It is not competent to an Appellate Court to find a prisoner on appeal guilty of a graver offence than that with which he was charged at his trial, unless an opportunity is afforded to the accused of defending himself against the charge so altered.

In the matter of Chundernath Deb, (5 C. L. R. 372) distinguished.

Quære:—Whether a petition of appeal against a conviction can be withdrawn after the Appellate Court has perused the evidence.

Reg. v. Madhub Chunder Giri Mohunt, 21 S. W. R. Cr. R. 13.

The High Court declined on appeal to receive evidence which was available at the trial below, when the prisoner deliberately elected not to give evidence in reply to the case made against him.

Per MARKBY, J.:—It is not the duty of the High Court in appeal to try a prisoner *de novo* upon the recorded depositions: the Court is bound, in forming its conclusion as to the credibility of the witnesses, to attach great weight to the opinion which the Judge who heard them has expressed upon that matter.

Reg. v. Nujnah, 22 S. W. R. Cr. R. 68.

Under sections 267 and 286 illustration (d) (Act X of 1872) there is no appeal to the High Court from an order passed by a Magistrate of the district requiring a person to give security for good behaviour.

Hetlall Roy, petitioner, 22 S. W. R. Cr. R. 75.

Where a Magistrate took an active part in the prosecution of the prisoners, and recorded the evidence of the material witnesses preliminary to deciding whether the case should go to trial or not, and by whom it should be tried, it was held that he was not a proper Court to hear the appeal from the conviction come to in the case.

Dutt Ram Misr, petitioner, 1 N. W. P. Rep. (Agra) 29.

Held that a Sessions Judge has no jurisdiction to hear an appeal from the order of a Magistrate under section 319, chapter XXII of the Criminal Procedure Code, (Act XXV of 1861) and that the object of the chapter is to prevent breaches of the peace likely to be occasioned and not the adjudication of title.

Empress v. Gayadin, 4 I. L. R. All. 148.

It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not coincide, and has acquitted accused persons, that an appeal by the Local Government must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by section 272 of the Criminal Procedure Code (Act X of 1872). The doing so should be limited to those instances, in which the lower Court has so obstinately blundered and gone wrong, as to produce a result mischievous at once to the administration of justice and the interests of the public.

Held, therefore, the Local Government having appealed from an original judgment of acquittal of a Sessions Judge, that, as such judgment was an honest and not unreasonable one, of which the facts of the case were susceptible, such appeal should be dismissed.

Gopal Chunder Mundle, petitioner in re, 10 C. L. R. 57.

The fact that the pleader of the accused is present in Court when an order is made admitting an appeal, does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal.

Empress v. Protap Chunder Mookerjee, 11 C. L. R. 25.

Per WHITE, J.:—The sound rule to apply in trying a criminal appeal where questions of fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case, the Court must be convinced before reversing a finding of fact by a lower Court that the finding is wrong.

Howaldar Roy & Wahed Ali Khan in re, 11 C. L. R. 423.

There is no appeal to the District Magistrate from a conviction passed by a Bench of Magistrates consisting of a salaried Magistrate with second class powers and two or more Honorary Magistrates, a Bench so constituted having under the Government orders of 31st March 1882 the powers of a Magistrate of the first class.

Rangai & others, Appellants in re, 12 C. L. R. 500.

A Deputy Commissioner exercising the special powers conferred by section 36 of Act X of 1872, having passed a sentence of 3 years' rigorous imprisonment—a sentence not requiring confirmation, an appeal to the High Court was preferred after the new Code, Act (X of 1882) came into force. Held, that under section 408 of the latter Act, the appeal did not lie.

Reg. v. Radakissen Sein & another, S. W. R. 1864; Cr. R. 18.

The High Court has no jurisdiction to hear an appeal from a conviction and sentence by the Superintendent of Cachar in his capacity of Magistrate of the district.

Lyall & Co. v. Sam Mundle, S. W. R. 1864, Cr. R. 23.

In a case of dismissal of complaint by a Deputy Magistrate, it was held that a prosecutor had no right of appeal, but ought to have moved the Magistrate to procure, under section 434 of the Code of Criminal Procedure (Act XXV of 1861), a reversal by the High Court, of the order of dismissal.

Proceedings of 20th May 1867. Weir, 239.

An accused person dealt with by a Superior Magistrate under the provisions of section 46, is "a person convicted on a trial held by the Magistrate" &c. for purposes of appeal to the Court of Sessions.

Kesavaiya & others, petitioners. Weir, 404.

A Sessions Judge, who was the Judge before whom an offence under section 193 of the Penal Code was committed, has jurisdiction to hear an appeal under section 473 of the Criminal Procedure Code.

Proceedings of 19th April, 1875. Weir, 322.

A Sessions Court or a Magistrate cannot, on the appeal of one prisoner, alter the sentence of another prisoner in the same case who has not appealed.

Government Pleader, Appellant. Weir, 546.

Appeal against an acquittal. Art. 157, Schedule II of the Limitation Act, XV of 1877, which prescribes a period of 6 months for appeals on behalf of Government against an acquittal, is subject to the provision of section 5 of the same Act, which allows the Court to receive an appeal after the time limited, when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal in due time. Where there has been unexplained delay in taking the necessary steps to present the appeal, the discretion allowed in section 5 will not be exercised.

Chand Khan v. The Empress, 9 I. L. R. Calc. 878.

No appeal lies to the High Court from an order passed by a District Magistrate under the provisions of section 123 of the Criminal Procedure Code (Act X of 1872), and on reference by the Magistrate, confirmed by the Sessions Judge under the same section, requiring a person to be detained in prison, until he should provide security for his good behaviour.

Joykissen Mookerjee v. The Queen, Ind. Jur. O. S. Nov. 1862. S. C. 1 S. W. R. P. C. 13.

Petition for leave to appeal against a conviction and sentence of the Sudder Nizamut Adawlut of Bengal, on the ground of alleged irregularities in the proceedings causing great hardship and injustice. Held, that (assuming that the prerogative of the Crown extended to the granting of leave to appeal in such a case, and was not curtailed by the operation of the Indian Act, XXV of 1861, and that this was *primâ facie* a case of great grievance) yet the consequences of allowing appeals in criminal cases would be such as to justify their Lordships in advising Her Majesty in the exercise of her discretion to refuse to grant the prayer of the petition.

Empress v. Sajiwan Lall, 5 I. L. R. All. 386.

A convicted person appealing, is not in the same position before the Appellate Court, as he is before the Court trying him: he must satisfy the Appellate Court that there is sufficient ground for interfering with the order of conviction; and if no such ground is shown, it is the duty of the Appellate Court not to interfere.

Government of Bengal v. Parmeshur Mullick, 10 I. L. R. Calc. 1029.

Under the provisions of Act X of 1882 no appeal at the instance of the Local Government lies from an order of acquittal in a case which has been tried by a jury, where the questions involved are purely questions of fact, for such an appeal to lie, it must be supported upon a ground which is covered by section 418.

ARREST.

Thacoordoss Nundee v. Shunkur Roy & another, 3 S. W. R. Cr. R. 53.

The arrest under civil process of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court, and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under section 78 of the Penal Code.

Abdool Kadir Khan v. The Magistrate of Purneah, 11 B. L. R. App. 8.

A prisoner arrested under a warrant, should be brought promptly before a Magistrate, who has then no authority to further detain him in custody, or to remand him to prison without some reason made manifest to him, either in the shape of sworn testimony given before him, or of some other form which can be put upon the record, and which is sufficient to justify him in sending the prisoner to prison.

Reg. v. Gobin Tewari & another, 1 I. L. R. Calc. 281.

In an appeal under section 272 of Act X of 1872 (Criminal Procedure Code), the High Court has power to order the accused to be arrested, pending the appeal.

Empress v. Mangu & others, 2 I. L. R. All. 340.

When an appeal has been preferred under section 272 of Act X of 1872, the High Court may order the accused to be arrested, pending the appeal.

Empress v. Karim Buksh, 2 I. L. R. All. 386.

K. and B. were accused of being concerned in the same offence. K. was first apprehended, and the Magistrate inquired into the charge against him, and committed him for trial, but the Court of Session acquitted K. The Local Government preferred an appeal against his acquittal, and the Magistrate arrested him with a view to his detention in custody until such appeal was determined. While K. was so detained, the Magistrate inquired into the charge against B. who had meanwhile been arrested and made K, a witness for the prosecution, and committed B. for trial. K.'s evidence was taken on B.'s trial. Held, *per* STUART, C. J. (SPANKIE, J. doubting) that K.'s arrest was lawful, and that his evidence was admissible against B. Held, *per* SPANKIE, J. that, assuming that the Magistrate looked on K. as an accused person, and his arrest was lawful, the Magistrate should not have examined him as a witness against B. and that, assuming that K.'s arrest was unlawful, and that when he made his statement, he was a free man, his evidence, if admissible, was not evidence on which a Court should place much reliance.

Reg. v. Narayan Babaji & others, 9 Bom. Rep. 346.

Proof of an unlawful commitment to confinement, will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law, is a question of fact, and not of law, and must be proved in order to satisfy the requirements of section 220 of the Indian Penal Code.

Reg. v. Sheikh Emoo, 11 S. W. R. Cr. R. 20.

Section 140 of the Code of Criminal Procedure (Act XXV of 1861) does not apply to a case of arrest for dacoity, made without warrant by a Subordinate Police officer in the presence of a head constable, who authorized him to make the arrest.

ASSESSORS.

Reg. v. Bushmo Anent, 3 S. W. R. Cr. R. 21.

Assessors ought to give the grounds of their opinions, particularly when they differ in opinion from the Judge.

Reg. v. Chutterdharee Sing, 5 S. W. R. Cr. R 59.

Case of murder where those prisoners, whose conviction depended on the uncorroborated evidence of accomplices and of an accessary after the fact, were acquitted. In case of view by assessors of the scene of an alleged offence, it was held that the Judge could not delegate his own

function of examining the witnesses on the spot, to the assessors who cannot under section 348 of the Code of Criminal Procedure (Act XXV of 1861) speak to, or communicate with, any other persons than the officer appointed to conduct them to the place.

Reg. v. Amiruddin, 7 B. L. R. 63; S. C. 15 S. W. R. Cr. R. 25.

Although the Criminal Procedure (Act XXV of 1861) does not expressly provide for summing up of the evidence in a trial with the aid of assessors, there is nothing in the Code to prevent a Judge from summing up the evidence to assessors. Where one of the two assessors says, that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other assessor concurs with him, it cannot be said that the assessors have given no reason for their opinion. The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the Queen, under section 121 of the Indian Penal Code, are offences under the Penal Code only, and are not treason or mis-prision of treason; and therefore the provisions of the Statute, 7 Will. III, C. 3, S. 5, are not applicable.

The *Gazette of India* or *Calcutta Gazette*, containing official letters on the subject of hostilities between the British Crown and Mahometan fanatics on the frontier, were rightly admitted in evidence, under sections 6 and 8 of Act II of 1855 as proof of the commencement, continuation and determination of hostilities. Similarly under section 6, a printed letter from the Secretary to the Government of the Panjab to the Secretary to the Government of India was properly resorted to by the Court, for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. (See now section 57, Act X of 1872.)

Reg. v. Bhugwanlall, 19 S. W. R. Cr. R. 3.

No legal conviction can take place, unless the opinion of the assessors is taken on the whole of the evidence in a case.

Reg. v. Mussamut Mina Nuggerbhatun, 3 S. W. R. Cr. R. 6.

The grounds of each assessor's opinion should be distinctly recorded by the Judge.

Reg. v. Matam Mal, 22 S. W. R. Cr. R. 35.

The intention of the Legislature in sections 255 and 265 of the Code of Criminal Procedure (Act X of 1872) in a case like this in which the accused was tried on two charges was, that the assessors should give a definite opinion, whether the prisoner is guilty of either of the offences charged, and if so, of which of the charges preferred against him, and that the Judge on delivering judgment should give it with advertence to the opinion of the assessors.

Shadulla Howladar & another, Appellants, 12 C. L. R. 506; S. C. 9 I. L. R. Calc. 875.

The effect of summing up, under the provisions of section 309 of the Criminal Procedure Code (Act X of 1882) the evidence in a case tried with assessors, is to enable the Sessions Judge in a long or intricate case, to place the evidence in an intelligible form, so as to assist the assessors in arriving at a reasonable conclusion. If, in summing up the evidence, the Judge is unable himself to record the heads of his summing up, he should avail himself of the services, not of a pleader for the prosecution, but, of a Court officer or of some independent person. The opinions of assessors should be taken individually, and not through one of their number. Where the Judge considers the evidence against some of the persons accused, unworthy of belief, he ought not to acquit them, without having first taken the opinion of the assessors.

BAD LIVELIHOOD.

Rojonikant Bhoomick, in re, 13 S. W. R. Cr. R. 24.

Where a person is adjudicated to be a person of notorious bad character under section 296, Code of Criminal Procedure (Act XXV of 1861), after having been tried for dacoity, the evidence taken in the trial for dacoity should not be used against the accused with reference to the accusation under section 296, which evidence should be taken independently.

Kookor Singh, in re, 13 S. W. R. Cr. R. 130.

A person against whom proceedings for bad livelihood have been taken, is entitled to have embodied in a charge, the precise matter which the Magistrate considers established by evidence against him. It is not sufficient to say generally that there is suspicion. He should be asked to produce his witnesses, or offered assistance to procure their attendance. He should be admitted to bail. A Magistrate is not competent to refuse bail unless the law sanctions such refusal.

BAIL.

Reg. v. Mahendra Narayan Bangabhushan, 1 B. L. R. A. Cr. 7.

A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under section 411 of Act XXV of 1861, is not an accused person within the meaning of section 436 of the same Act, so as to be admitted to bail by the Court Session, when his case is referred to the High Court under section 434 of the same Act.

Kurreemuddeen & another, petitioners, 9 S. W. R. Cr. R. 36.

A bail-bond by which the sureties bind themselves to be responsible for the appearance of the accused during the preliminary investigation, cannot be forfeited if the accused abscond after the preliminary enquiry, and during the trial at the Sessions Court.

Tajvormuddy Lahoree, prisoner, 10 S. W. R. Cr. R. 4.

A Deputy Magistrate, not in charge of a division of a district, has no jurisdiction to try a case under section 174, Penal Code which originated under section 68, Code of Criminal Procedure (Act XXV of 1861), and which was not referred to him by the Magistrate of the District.

There is nothing in section 219, Code of Criminal Procedure which prevents an accused person who has forfeited his bail-bond by default of appearance, from being proceeded against under section 179 of the Penal Code, notwithstanding that his surety has paid the penalty mentioned in the recognizance.

Ramloll Tewaree v. Soopha Ram, 10 S. W. R. Cr. R. 34; S. C. 1 B. L. R. S. N. 26.

Bail under section 212 of the Criminal Procedure Code (Act XXV of 1861) can be demanded, only in cases where further enquiry is pending, and the accused have not been discharged.

Khoodee Koibutnee v. Doorgadass Bhuttacharjee, 15 S. W. R. Cr. R. 82; S. C. 7 B. L. Ap. 37.

Before a warrant can issue attaching the property of a surety, he should be called on under section 220, Code of Criminal Procedure (Act XXV of 1861) to show cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record, that he had such notice given him.

Aradhun Mundul v. Nyan Khan Takadgeer & another, 24 S. W. R. Cr. R. 7.

A Sessions Judge has no power to release on bail, persons convicted by the Magistrate, pending a reference to the High Court under Act X of 1872, section 296.

Reg. v. Ram Rutton Mookerjee, 24 S. W. R. Cr. R. 8.

Act X of 1872, section 390, refers only to the period during which a case is under enquiry, and when the party concerned is still in the position of an accused. The Sessions Judge has no power to admit him to bail after he is sentenced and convicted.

Reg. v. Thakur Parshad, 1 I. L. R. All. 151.

The Court of Session has no power under section 390, Act X of 1872, to admit a convicted person to bail, a *convicted person* not being an *accused person* within the meaning of that section.

Reg. v. Scaife & wife, 9 Dowling's Reports, 553.

The principle on which a party committed to take his trial for an offence may be bailed, is founded on the probability of his appearing to take his trial, and not on his supposed guilt or innocence, but the fact of a bill having been found against him, is material in estimating that probability.

Manikam Mudali & others v. The Queen, 6 I. L. R. Mad. 63.

The proceeding in which it has to be determined whether an accused person should be admitted to bail by a Magistrate is a judicial proceeding, and, as such, cognizable by the High Court under section 297 of the Code of Criminal Procedure, 1872.

Section 194 of the Criminal Procedure Code, 1872, must be read as a proviso to section 190, and authorises a Magistrate for reasonable cause to remand an accused person to jail without examining any witnesses. Where evidence was available, but it appeared necessary to the Magistrate to defer the examination of witnesses in order that further evidence may be produced (so that the inquiry when commenced might be continuous). Held, that such a reason recorded by the Magistrate, although not sworn to, justified a remand for five days and a further remand for four days. An accused person has a right to have the evidence against him recorded at as early a period as possible, and the fact that there is, or may be, a great body of evidence forthcoming against him is not a ground for detention for an inordinate period.

Per KERMAN, J. :—When a Magistrate defers the examination of witnesses, adjourns the inquiry, and remands the prisoner under section 194 of the Code of Criminal Procedure, 1872, he is bound to express clearly on the record the reasonable cause from which such action became necessary or advisable.

Ponnusami Chetti & others v. The Queen, 6 I. L. R. Mad. 69.

When an accused person is first brought before a Magistrate, and a remand is required by the prosecutor, it is ordinarily sufficient to show by the evidence of a police officer, that the police are in possession of information, believed to be reliable, that the accused has committed an offence; but when the accused is again brought up after remand, and a further remand is needed, some direct evidence of the guilt of the accused should be required, to justify the Magistrate in refusing bail, and with each remand the necessity for production of evidence of guilt becomes stronger.

Parankusam Narasaya Pantulu v. Stuart, 2 Mad. Rep. 396.

The refusing or accepting of bail is a judicial, not merely a ministerial duty, and a mistake in the performance of that duty, without malice, will not be sufficient to sustain an action.

Proceedings of 13th April, 1869. 4 Mad. Rep. Rul. 45.

Where the condition of bail-bonds given by the defendants and by the surety of a security bond was, that the defendents should appear when called upon. Held, that the defendants and their surety were entitled to reasonable notice of the time at which the former would be required to attend.

Proceedings of 20th August, 1869. 4 Mad. Rep. Rul. 69.

Section 294 of the Code of Criminal Procedure (Act XXV of 1861), does not authorize the imprisonment of sureties.

A single Judge of the High Court may order the release of a prisoner on bail pending the hearing of an appeal.

Reg. v. Jhaloo Sirdar, S. W. R. 1864, Cr. R. 18.

The latter part of section 194 (Act X of 1872), must be applied to a case which is bailable, and in which bail is tendered. There is no conflict between sections 194 and 388. The imperative words of section 388 compel the exercise of the apparent discretion given in section 194 in a particular manner.

Proceedings of 17th October, 1876. Weir, 277.

It is competent to a Magistrate to admit to bail recalcitrant witnesses, when such witnesses have been arrested under sections 352 and 355 of the Criminal Procedure Code, (Act X of 1872).

Proceedings of 11th May, 1881. Weir, 360.

Section 390, Criminal Procedure Code applies exclusively to accused (not to convicted) persons. A Sessions Court has therefore no power to admit convicted persons to bail.

Proceedings of 13th April, 1880. Weir, 362.

When the bond executed, conditioned, that the accused should attend on a specified date, and default was made on a date other than the specified date: it was held that the penalty could not legally be enforced.

Proceedings of 4th Dec., 1878. Weir, 363.

The term bail-bond in section 398, clause 4 does not include a recognizance entered into by a witness.

Proceedings of 18th Nov. 1874. Weir, 364.

BENCH OF MAGISTRATES.

Where a Bench of Magistrates has before it materials which are sufficient in law to support a conviction, the High Court has no authority to disturb it.

Abdool Huq Chowdhry v. Idrak, 21 S. W. R. Cr. R. 57.

A Bench of Magistrates has no jurisdiction to try a charge for lurking house-trespass by night or house-breaking by night, under section 457 of the Penal Code.

Reg. v. Bachun Kadir, 23 S. W. R. Cr. R. 6.

A case triable only by a Magistrate exercising powers of the 1st class, came before a Bench of Magistrates, neither of whom individually exercised those powers, but sitting together the Bench was so invested. At the adjourned trial, only one of these Magistrates was present. Held, that he was not competent to try the case alone, and the orders passed by him were set aside as illegal.

Baroda Prosunno Chuckerbutty & others in re, 2 C. L. R. 348.

Municipal Commissioners of Dacca v. Someer, 9 I. L. R. Calc. 38.

A notice was issued under section 215, Bengal Act, V of 1876 requiring A. to remove an alleged obstruction. The requisition was not complied with, and A. was prosecuted for non-compliance therewith, under section 216 before a Bench of Honorary Magistrates. Held, that the Court had power to inquire whether the alleged obstruction was in point of fact, an obstruction or not.

Havaldar Roy v. Jagu Mean, 9 I. L. R. Calc. 96.

No appeal lies to a District Magistrate, from the decision of a Bench of Magistrates composed of an Assistant Magistrate with second class powers, and two or more Honorary Magistrates, in a case tried under Chapter XVIII of the Criminal Procedure Code (Act X of 1872).

Nobin Krishna Mookerjee v. The Chairman of The Suburban Municipality, 10 I. L. R. Calc. 194.

Notwithstanding anything contained in section 555 of the Criminal Procedure Code (Act X of 1882), a conviction for an offence against any Municipal law or regulation, had before a Bench of Magistrates which includes a salaried officer of the Municipality is bad.

CALENDAR.

Proceedings of 1st Dec. 1870. 6 Mad. Rep. Rul. 6.

Duplicates of Calendars sent by the Magistrate to the Session Court, should be retained in the Session Court for a period of three years, after which they may be destroyed, or returned to the Magistrate's offices.

Proceedings of 5th Jany. 1872. 7 Mad. Rep. Rul. 1.

In cases falling under Act XIII of 1859, the Calendar should be submitted to the Appellate authority immediately that an order under the first part of section 2 is passed. When further proceedings under the latter part of section 2 are taken, a simple copy of the order, containing a reference to the Calendar, should be sent.

CHARGE.

Reg. v. Baboolun Hijrah, 5 S. W. R. Cr. R. 7.

One count charging each specific offence, and describing it with a reasonable degree of certainty, is sufficient.

Reg. v. Dhurbairo Polie, 8 S. W. R. Cr. R. 30.

In a case of mischief by fire, with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling.

Reg. v. Dhurmonarain Moitro & others, 1 S. W. R. Cr. R. 39.

A Judge can alter or amend a charge at any stage of the trial.

Reg. v. Dyee Bhola, 1 S. W. R. Cr. R. 40.

In a case of murder, after the finding and discharge of the assessors, the Judge altered the charge to culpable homicide not amounting to murder, and convicted the accused on that charge. Held, that the conviction was illegal.

Reg. v. Feojdar Roy, 9 S. W. R. Cr. R. 14.

In framing a charge for giving false evidence, under section 193 of the Penal Code, the charge should be precise; and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.

Reg. v. Goburdhan Bhuyan, 4 B. L. R. Ap. 101, S. C. 13 S. W. R. Cr. R. 55.

When an accused pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence in the record. Upon a charge of murder, the accused pleaded "guilty", the Sessions Judge, taking into consideration the circumstances of the case, reduced the charge to homicide not amounting to murder. Held, that the proceeding was illegal.

Reg. v. Jehangeer Buksh Khan, 16 S. W. R. Cr. R. 43.

A Magistrate should himself state distinctly what charge an accused person has to meet, and ought not to leave that to his amlah. A person who is called as a witness by the Court, cannot be convicted and fined under section 283 of the Penal Code.

Reg. v. Maharaj Misser, 7 B. L. R. Ap. 66, S. C. 16 S. W. R. Cr. R. 47.

Six persons were charged in the same charge as follows:—"That you on or about the —— day of June —— at Tajpur, committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding, and that you have thereby committed an offence under section 193 of the Penal Code." Held, the charge was bad and defective: first, as it charged a number of persons jointly with giving false evidence; second, as it did not show what statement the accused persons made; third, as it did not mention the day and year, when the offence was committed; fourth, as it did not indicate the Court or officer before whom the false evidence was given. To support a charge of giving false evidence under section 193, it must be shewn that the accused intentionally made a particular statement false to his own knowledge.

Reg. v. Mohur Dowalia, 16 S. W. R. Cr. R. 53.

A charge under section 451 must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment.

Reg. v. Moosubroo & others, 8 S. W. R Cr. R. 37.

A charge should distinctly set forth the particular offence in respect of which the accused either omitted to give information, or gave information which he knew to be false; and it should appear precisely what his duty was in the matter.

Reg. v. Narayan Naik, 5 B. L. 660; S. C. 14 S. W. R Cr. R. 34.

A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint or authorization be contained only in a letter from the Judge of that Court, to the Magistrate of the district, sent with the record of the case, notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorization of the Court before which, or against the authority of which, an offence mentioned in Chapter XI of the Code of Criminal Procedure is alleged to have been committed is a sufficient warrant for commencement of criminal proceedings. Reg. *v.* Mahin Chundra Chuckerbutty, (3 B. L. R. A. Cr. 67) overruled.

Reg. v. Ram Khuru Kairee, 6 S. W. R. Cr. R. 39; S. C. B. L. R. Sup. Vol. 488 F. B.

The splitting up of one aggravated offence into separate minor offences, (*i. e.*, a conviction for lurking house-trespass and theft under sections 456 and 380 of the Penal Code, instead of for lurking house-trespass in order to commit theft, under section 457) prohibited. Where a Magistrate convicted under sections 456 and 380, it was held that, the Judge, on appeal, instead of setting aside the conviction, and sending the case back to the Magistrate for re-trial under sectiona 457 and 380, ought only to have set aside the conviction under section 380, and allowed the conviction under section 456 to stand. (NORMAN, J. *dubitante.*)

Reg. v. Ram Rutton Doss, 9 S. W. R. Cr. R. 23.

A Sessions Judge has no power to try a prisoner who has been committed for trial on no specific charge.

Reg. v. Thomson, 1 B. L. R. O. Cr. 1.

It ought to appear upon the face of a charge, that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection can only be taken under section 41 of Act XVIII of 1862, before the jury has been sworn, and it is not ground for arrest of judgment.

Kalaram Sing & others, 7 S. W. R. Cr. R. 8.

Where several offences are charged under the same section, the committing Magistrate should frame the charge so as to contain a separate head for each offence. The omission of the Magistrate to do this, may be remedied by the Sessions Judge exercising the powers of amendment contained in section 244 of the Code of Criminal Procedure (Act XXV of 1861).

Bhugwan & others v. Doyal Gope, 10 S. W. R. Cr. R. 7.

Where a Deputy Magistrate did not draw up a charge in accordance with section 250 of the Code of Criminal Procedure (Act XXV of 1861), but gave the accused clearly to understand the nature of the charges made against them, the irregularity was held to fall within section 403 of that Code.

Ramdoyal Singh, petitioner, 15 S. W. R. Cr. R. 3.

In a case under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) in which the accused had full opportunity given him to answer the case which was made against him, the High Court felt itself precluded by section 426 of the Code of Criminal Procedure from interfering with the judgment of the lower Court,—even if it found that there was an irregularity in the proceedings in consequence of the absence of a formal charge.

Ramdhone Acharjee & others, petitioners, 25 S. W. R. Cr. R. 17.

Where a Magistrate gives reasons for committing a case for trial in a certain way, the Sessions Judge must either accept the charges as framed or frame others himself; he is not authorized by the Criminal Procedure Code to insist on a re-drawing of the charge by the Magistrate unless he specifies the charge which he wishes to be sent up.

Reg. v. Udit Singh & others, 25 S. W. R. Cr. R. 46.

In a case in which the charge did not contain such particulars as to time and place as were reasonably sufficient to give notice to the accused of the matter with which he was charged, the accused was acquitted by the High Court.

Reg. v. Upendronath Doss & another, 1 I. L. R. Calc. 356.

Semble :—A charge under sections 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should in his decision state distinctly what were the particular representations and words which he found on the evidence had been exhibited and uttered, and which he adjudged to be obscene within the meaning of those sections. Where no such specific decision has been given, the High Court, when the case has been transferred under section 174, Act X of 1875, (High Court's Criminal Procedure Act), may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.

Empress v. Dononjoy Baraj, 3 I. L. R. Calc. 540.

Section 453 of the Criminal Procedure Code (Act X of 1872) simply places a statutory limit on the number of charges which may legally form part of a single trial. There is nothing in the section, however, to prevent an accused from being separately charged and tried, on the same day, for any number of distinct offences of the same kind committed within the year.

Shibo Prosad Pandah in re, 4 I. L. R. Calc. 124; S. C. 3 C. L. R. 122.

MARKBY, J.:—Although sections 235 and 237 of Act XXV of 1861 have been repealed, it may still be inferred from illustration A., section 439 of the present Criminal Procedure Code, (Act X of 1872) that it is unnecessary specifically to allege in a charge, the absence of all general and some at least of the other exceptions mentioned in the Penal Code. The operation of the illustration, however, is strictly confined to the statement of the offence in the charge.

Empress v. Vaimbilee, 5 I. L. R. Calc. 826.

When arraigning an accused, and before receiving his plea, the Court should be careful to insure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly, the nature of the charge to which he is called upon to plead.

It is not necessary that a statement made to a Court by an accused in a foreign language, should be taken down in the words of that language. The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded.

Empress v. Samiruddin, 8 I. L. R. Calc. 211.

A prisoner was charged with "causing the death of A. by inflicting a wound on him with a 'chheni' with the intention of causing bodily injury, such as was sufficient, in the course of nature to cause death, or which he knew to be likely to cause death." Held, that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in section 300 of the Penal Code. With reference to the second clause, it should have run "likely to cause the death of A. the person to whom the harm was caused." With reference to the third clause it should have said "ordinary course of nature."

Ram Manikya Chuckroburty & others, in re, 1 C. L. R. 478.

Section 453 of the Code of Criminal Procedure (Act X of 1872) is not to be construed as meaning that, no matter how many offences of the same kind a man may commit within one year, he may not be prosecuted for more than three. He may be separately tried for other offences.

Turibullah & others in re, 4 C. L. R. 338.

Upon the single charge of wrongful confinement, preferred under section 342 of the Indian Penal Code, before a Joint Magistrate, the prisoners raised a defence justifying the confinement on the ground that the persons confined, had been caught by them under circumstances which led to the belief that they had committed house-breaking by night with intent to commit theft. Enquiry having been made, the Magistrate committed the prisoners not only for wrongful confinement, but, disbelieving the defence, for fabricating false evidence and for bringing a false charge. The prisoners were tried by the Sessions Judge, and found guilty on all the three charges at one and the same time. Held, that the conviction on the last two charges was illegal, as by adding the additional charges, the Magistrate had really prejudiced the defence to the first charge. Where the Court, without having first heard the evidence for the prosecution, examines the witnesses

for the defence, he commits an irregularity, but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside.

Empress v. Poresholl-lah Sheikh, 7 C. L. R. 143.

Where an accused person is committed to take his trial on specific charges before the Sessions Court, the Judge has no power under section 446 of Act X of 1872 to expunge a charge before calling upon the accused to plead to it.

Empress v. Ajudhia, 2 I. L. R. All. 644.

Held that, where in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial, it may be convenient to vary the form of charge, and to designate not only the principal, but the subsidiary crimes alleged to have been committed, yet in the interests of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night and committed theft therein was charged and tried, for offences under sections 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under section 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under section 380.

Mewa in re, 6 N. W. P. Rep (All.) 254.

A Magistrate, who is otherwise competent, has, under section 141 of Act X of 1872, a discretion to enquire into and try a person on any charge which he may consider covered by the facts complained of by any person, or reported by the police, without reference to the particular charge that may have been preferred by the complainant or by the police, and without reference to the procedure which, when he has determined the offence with which he will charge the accused, it will be competent to him to adopt. Held, therefore, when a person was brought before a Magistrate by the police, charged with an offence under section 457 of the Indian Penal Code, an offence not triable in a summary way, that the Magistrate was competent to alter the charge to one under section 411, and to try the accused summarily under the provisions of section 222 of Act X of 1872.

Reg. v. Waris Ali, 3 N. W. P. Rep. All. 337.

Although a Sessions Judge has power to alter or amend a charge, he cannot add an entirely new charge which is not even cognate to the charge on which an accused person has been committed for trial.

Reg. v. Jamurha & others, 7 N. W. P. Rep. All. 137.

Section 455 of Act X of 1872, applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. The accused persons were committed for trial under an erro-

neous and untenable alternative charge under section 193 of the Indian Penal Code. The Court of Session amended the charge under section 193, and added charges under sections 201 and 203. It was doubtful whether the amendment and addition, were not likely to prejudice the accused in their defence. The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under section 193.

Imperatrix v. Baban Khan valad Mhaskoji, 2 I. L. R. Bom. 142.

The accused was charged under section 217 of the Indian Penal Code; but the charge did not distinctly state what the direction of the law was, which he disobeyed and how he disobeyed it. Held, that when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal, should be limited to the particular sense in which the charge has been understood at the trial.

Varadara Julu Nayudu Exparte, 1 Mad. Rep. 66.

Where a Magistrate has, in the exercise of his discretion, refused to proceed with a criminal charge pending a civil action in respect of the matter out of which the charge arose, a mandamas will not be granted to compel the hearing of the charge.

Proceedings of 16th Dec. 1864, 3 Mad. Rep. Ap. 2.

The course taken by a Magistrate before preparing a charge under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) must depend upon the circumstances of each case, and the Magistrate should exercise his discretion in the matter.

Proceedings of 16th Mar. 1868, 4 Mad. Rep. Rul. 5.

The charge and finding in a case of causing hurt under section 324 of of the Indian Penal Code, need not contain a negation that the hurt was caused on grave and sudden provocation.

Proceedings of 17th April 1868, 4 Mad. Rep. Rul. 11.

A charge alleging a previous conviction need not show the extent of the former punishment.

Reg. v. Kabhai Rava Bhai & others, 5 Bom. Rep. Crown Cases, 40.

Held, that the omission to prepare a charge did not vitiate the proceedings; and conviction upheld.

Reg. v. Govindas Haridas, 6 Bom. Rep. Crown Cases, 76.

The Court, under section 1 of the Criminal Law Amendment Act (XVIII of 1862) has power to order the amendment of a charge involving a change in the ownership of stolen property, provided such amendment does not prejudice the accused in his defence upon the merits.

Where it is doubtful whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits, the amendment ought not to be made.

Where the accused was charged with receiving stolen property from the wife of the prosecutor, the property in the goods being laid in the prosecutor, and the charges were amended by laying the property in the prosecutor jointly with his mother, it was held that such amendment ought not to have been made.

Reg. v. Bapu Parbat, 7 Bom. Rep. Crown Cases, 81.

Proper course laid down for a Judge to adopt when the facts proved do not support the charge as laid.

Reg. v. Ajam Dulla & others, 8 Bom. Rep. Crown Cases, 115.

In order to make an alternative charge of two or more offences regular under section 242 of the Criminal Procedure Code (Act XXV of 1861), the offences specified in such alternative charge must all be offences against the Indian Penal Code. Therefore, a charge against a prisoner either of "criminal breach of trust" under section 409 of the Indian Penal Code, or of "undue exaction of money" under section 16 of Reg. XVII of 1827 is irregular. An offence under the latter section, being punishable by imprisonment for seven years, is triable exclusively by a Court of Session, under the provisions of the Schedule of the Code of Criminal Procedure Amendment Act (VIII of 1869) last page.

Reg. v. Rakhma & another, 10 Bom. Rep. 373.

The omission of the word "dishonestly," both in the charge and in the record of the conviction, is not a ground for reversal of conviction and sentence, where an accused person has fully understood the nature of the offence with which he is charged, and has not been prejudiced by the omission. Conviction and sentence recorded by a Magistrate, and reversed by the Session Judge upon this ground, restored by the High Court, on application directed by Government under section 272, Criminal Procedure Code (Act X of 1872).

Reg. v. Chand Nur & Pirbhai Adamji, 11 Bom. Rep. 240.

When a person is charged with an offence consisting of parts, a combination of some only of which constitutes a complete minor offence, he may, under section 457 of the Code of Criminal Procedure (Act X of 1872) be convicted of the latter without being specifically charged, but only when the graver charge gives notice of all the circumstances going to constitute the minor offence. Hence, where a man charged with murder was convicted of abetment of it, the High Court annulled the conviction and sentence, and ordered him to be retried on the latter charge.

Reg. v. Ramajirav Jirbajirav & another, 12 Bom. Rep. 1.

Where a person was charged by an Assistant Session Judge with (1) attempting to commit criminal breach of trust as a public servant; (2) framing as a public servant an incorrect document to cause an injury; (3) framing as such public servant an incorrect document to save a person from punishment, and was acquitted on the ground that he was not a public servant, though the Judge found that he had framed the document

with a fraudulent intent. The High Court held that the Judge ought to have convicted him of attempting to cheat under sections 455, 456 of the Code of Criminal Procedure, and as the facts which he would have had to meet on that charge, were the same as he had to meet on the charge of criminal breach of trust, allowed the objection urged at the hearing, though not distinctly taken in their appeal by the Government, and ordered a retrial of the accused.

Reg. v. Mahomed Ali, 13 S. W. R. Cr. R. 50.

A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial.

Reg. v. Durzoolla & others, 9 S. W. R. Cr. R. 33.

A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by sections 234 and 237 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Sobrai Gowallah & others, 20 S. W. R. Cr. R. 70.

In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section, which have been clearly proved against them. On conviction of each of these separate charges, a separate sentence on each conviction should be passed with a direction (under section 317 of the Code of Criminal Procedure (Act X of 1872) that each should take effect on the expiry of the next prior sentence.

Reg. v. Sheikh Jakir, 22 S. W. R. Cr. R. 39.

Under section 439, Code of Criminal Procedure (Act X of 1872) if the accused has been previously convicted of any offence, and if, it is intended to prove such previous conviction for the purpose of affecting the punishment, the fact of the previous conviction must be stated in the charge. A statement in a count that at the time when the prisoner committed the offence (no offence being mentioned specifically in the count) he had been previously convicted of offences punishable under Chapter XVII of the Indian Penal Code, is not a sufficent compliance with the provisions of section 439.

Mutirakal Kovilagatha Rama Varina Raja v. The Queen, 3 I. L. R. Mad. 351.

R. having been committed by a Magistrate for trial by a Sessions Court on a charge under section 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed. Upon the application of the public prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge under sections 109 and 201 of the Penal Code, of abetting C. a female co-prisoner charged with having assisted in burying the body of the murdered person, required R. to plead to the charge and having tendered a pardon to, and examined C. as a witness, convicted and sentenced R. to 2 years' rigorous imprisonment: Held, that, as there was no evidence before the Magistrate to support the charge against R. framed

by the Sessions Judge, the action of the Judge was *ultra vires* and the conviction on the added charge illegal. Held also, that in as much as the Sessions Judge considered R. more culpable than C., the proper cause would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an inquiry as to whether there was ground for a more serious charge against R.

Semble :—The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in sections 455, 472, 474 of the Criminal Procedure Code (Act X of 1872) unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary inquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him and enables him to make his defence.

Govt. v. Thakoor Dass & Koondun, 1 N. W. P. Rep. (Agra), 13.

The prisoner who was charged with culpable homicide not amounting to murder, was tried for that offence, and there being no sufficient proof to convict on that charge, was tried by the Sessions Judge for not having used lawful means in preventing the riot (section 154) and was punished for that offence. Held, that the Sessions Judge was competent to change the charge, and to try the prisoner for any offence coming under any one of the sections of the Code.

Empress v. Murari, 4 I. L. R. All. 147.

M. was accused of cheating G. on two different occasions, and also of cheating K. on a third occasion. The three offences were committed within one year of each other; and M. was charged and tried at the same time for the three offences. Held, that such joinder of charges was irregular, in as much as the combination of three offences of the same kind, for the purpose of one trial, can only be, where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code. (See Manu Miya *v.* The Empress, post, page 384).

Reg. v. Notabur Nundy, 1 Ind. Jur. 43 (N. S.)

An indictment will not be invalidated in consequence of the charge not notifying the specific section under which it has to be prosecuted. Under section 161, it is necessary to show that the offence, the instigation of which, is the subject of the charge, has been committed.

1 Ind. Jur. N. S. 18th Dec., 1865, p. 46.

Simply the omission of a count in the charge is a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another.

Empress v. Sreenath Kur, 10 C. L. R. 421.

The offences under sections 167 and 466 of the Penal Code respectively are not of the same kind within the meaning of section 453 of the Criminal Procedure Code (Act X of 1872).

Empress v. Uttom Koondoo & another, 10 C. L. R. 466.

The offence of receiving or retaining stolen property punishable under section 411, and of habitually receiving or dealing in such property punishable under section 413 of the Indian Penal Code are not offences of the same kind within the meaning of section 453 of the Criminal Procedure Code (Act X of 1872).

Proceedings of 30th August, 1862. Weir, 300.

The charge though amended by the Court of Session, must still run in the name of the committing officer.

Proceedings of 21st Oct., 1878. Weir, 373.

The liability to whipping as an additional punishment under section 3 of Act VI of 1864, and the liability to enhanced punishment under section 75 of the Penal Code are distinct liabilities, and may or may not so exist in any particular case.

Either or both liabilities must be set out in the charge according as they arise or not in the circumstances of each particular case.

Proceedings of 23rd July, 1873. Weir, 375.

Schedule III of Act X of 1872 requires the second person (and not the third person) to be used in the formal charge.

Proceedings of 8th Sept. 1862. Weir, 376.

Charges which require alteration should, as a rule, be amended by the Court of Session before the trial commences.

Proceedings of 30th March, 1863. Weir, 379.

When a prisoner is tried on several heads of charge, the principal legal offence involved should form the first head of charge: the object of adding others is not the accumulation of punishments, but to provide against the event of the evidence failing to establish the principal charges.

Puli Sanki Reddi & others, accused. Weir, 384.

Where 15 persons were jointly tried and convicted of distinct offences of committing nuisance, it was held that as the accused must have been prejudiced in their defence, the conviction was bad.

Manu Miya v. The Empress, 9 I. L. R. Calc. 371. S. C. 11 C. L. R. 522.

Where an accused was charged under one charge including four counts, *viz.*,—(1) House-breaking by night with intent to commit theft in the house of A.; (2) Theft from the same house; (3) House-breaking by night with a like intent in the house of B; (4) Theft from that house; and where he pleaded guilty to the first and third charges, Held, that the case was within the terms of section 453 (Act X of 1872), and that the words "offences of the same kind" are not to be limited by the explanation to that section, but include a case like this, where a man has within a year committed two offences of house-breaking. Held, also, that the words "offences of the same kind" are not limited to offences against the same person.

Per FIELD, J. :—The explanation to section 453 must be understood as extending, and not as limiting, the meaning of that section.

Per NORRIS, J. :—Care should be taken that accused persons are not prejudiced by charges being joined, and the Court should at all times be anxious to lend a willing ear to any application upon their behalf by separation of charges, and for separate trials upon separate charges. Empress *v.* Murari, (I. L. R. 4 All. 147) dissented from.

Reg. v. Sahabut Sheikh, 13 S. W. R. Cr. R. 42.

The practice of dividing the facts which constitute parts of one offence into several minor offences, condemned.

Govt. v. Ramasawmy, 5 S. W. R. Recorders Ref. 1.

A charge under section 302 of the Penal Code, need not set out at length all the facts necessary to constitute the offence of murder, and negative all the exceptions contained in section 300, which defines the crime of murder. Technical objections to criminal charges, particularly on the ground of the want of a sufficient specification of details, should be taken before the conclusion of the trial, where the Judge may, if necessary, amend the charge, and not afterwards, unless it appear that some failure of justice has been caused by the irregularity complained of.

Empress v. Bepin Behary Shaha, 13 C. L. R. 110.

Where in a trial by jury, the Sessions Judge called upon the accused to answer at the same time a charge of theft, and also a charge of having been previously convicted, the High Court refused to interfere, it not appearing that a failure of justice had been caused by the irregularity.

CLAIM TO PROPERTY UNDER SEIZURE.

Sookhan Sahoo v. Govt., 18 S. W. R. Cr. R. 5.

Petitioner was charged with the theft of certain money found in his house and acquitted. Proclamation having been made for claimants to come in and claim the property, no one appeared, whereupon petitioner preferred his claim and asked the Assistant Magistrate to summon certain witnesses, but the Assistant Magistrate refused to do so and disallowed his claim, the Magistrate on appeal declining to interfere. On reference by the Judge, the High Court held that the Assistant Magistrate was bound to summon the witnesses named by the petitioner, set aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question.

COMMISSION.

Empress v. Counsell, 8 I. L. R. Calc. 896.

The High Court refused to issue a commission in a criminal case, on the ground that such a course would be unsatisfactory and dangerous to the interests of the prisoner.

Empress v. Bal Gangadhar Tilak, 6 I. L. R. Bom. 285.

Where a Government servant who had executed his recognizance to appear and give evidence for the prosecution, at a criminal trial to take place in the High Court of Bombay, was subsequently ordered to a distant station on the public service, and could not, with due regard to the public interests, return to Bombay in time for the trial. Held, on the application of Government, that his evidence might be taken by commission before his departure from Bombay, under the provisions of section 76 of the High Court Criminal Procedure, Act X of 1875.

Empress v. Dabee Pershad, 6 I. L. R. Calc. 532.

The evidence of a witness taken upon commission is not admissible in a criminal trial held before the High Court, unless it can be shown that such evidence was so taken upon an order made by that Court under section 76 of Act X of 1875, or unless it is admissible under section 33 of the Evidence Act.

Farid-un-nissa in re, 5 I. L. R. All. 99.

Semble that in criminal cases "*pardah nashin*" women are not of *right* exempted from personal attendance at Court. Also that the word "inconvenience" in section 330 of the Criminal Procedure Code (Act X of 1872) empowers the Courts to allow examination by commission in criminal cases where a witness, according to the manners and customs of the country, ought not to appear in public.

The complainant in a case of defamation, alleging that she was a "*pardah nashin*," applied to be examined by commission. *Held*, that the fact that she was a complainant, and not merely a witness, materially altered her position as regards the question whether she ought not to be exempted from personal appearance in Court, and that, under the circumstances, she ought not to be examined by commission, but ought to attend personally to be examined in Court. Direction to the Magistrate to make such arrangements for the examination of the complainant in Court as should secure her privacy, consistent with the recording of her evidence, according to law, in the presence of the accused. Witnesses in criminal cases should not be examined by commission except in extreme cases of delay, expense, or inconvenience.

STRAIGHT, J.:—I have listened with the very greatest interest and attention to the learned Counsel, who has so ably and earnestly urged all that possibly can be said in support of his client's petition. I have always been, and always shall be, to the fullest extent possible, consistently with common sense, ready and willing to make every concession I can, in the administration of justice, to the customs and prejudices of Hindus and Muhammadans alike. And in dealing with a question of the kind now before us, I bear in mind that, intellectual progress and enlightenment, which does so much to dissipate primitive fancies and superstitions, has necessarily not as yet achieved the same amount of advancement in these Provinces as it has in the Presidency Towns and Lower Bengal. I admit to the full the necessity for still preserving a tenderness and sympathy for native ideas and notions, some of which to the European mind might seem absurd, and indeed it is my duty to do so.

Although I am not prepared to adopt in its integrity the principle enunciated in the Calcutta ruling (Hurro Soondery Chowdhrain in re 4 I. L. R. Calc. 20) quoted by Mr. Hill, that in criminal cases "*pardah nashin*" women are of *right* exempted from personal attendance at Court, I should be loth to differ with the two experienced Judges who recorded that opinion, by holding that the word "inconvenience" in section 330 of the Criminal Procedure Code does not empower the Courts to allow examination by commission in criminal cases, where a witness, according to the customs and manners of the country, ought not to be compelled to appear in public But the matter now before me appears to be of an exceptional character, and while I agree, as Mr. Hill ingeniously urged, that the petitioner, though a complainant, is none the less a witness, I nevertheless think that the fact of her being a person who has set the criminal law in motion materially alters her position as regards the question under consideration. As I pointed out in the course of the argument, she had the alternative of bringing a suit, and if she had adopted that course, section 640 of the Civil Procedure Code would have protected her. But she has thought proper to cite her alleged defamer in a Criminal Court, and it is his right and privilege to have her evidence taken in his presence in such Court. Were it otherwise, it is impossible to conceive the dangers and mischiefs that would arise, the false charges that would be preferred, the malicious prosecutions to which persons would be subjected.

The petitioner invokes the criminal law to punish, and I think that in such a case she should be required to guarantee the *bonâ fides* of her prosecution, and that it has been really instituted by her of her own free will and not at the instigation of some other person, by attending at the Magistrate's Court. I most unhesitatingly say that the taking of evidence on commission in criminal cases should be most sparingly resorted to. Such a thing is unknown to English practice, and out here ought not to be adopted save in extreme cases of delay, expense, or inconvenience. The Criminal Courts of this country have difficulty enough to deal with the false charges made, and the perjured testimony given by prosecutors and witnesses, whose demeanour and truth they have personal opportunity of estimating, without having their labours complicated with the written evidence of parties not before them. I think the order of the Magistrate in the present case was substantially right, and I refuse the prayer of the petitioner. I, however, direct the Magistrate, if the complainant is found to be a "*pardah nashin*" lady, and if she elects to attend and support her charge, to allow her to be brought into his room at the Court-house in her palki, or if this is not feasible, to make such other arrangements, as may enable her to remain in it, and strictly preserve her privacy, and subject her to the least inconvenience or annoyance, for the purpose of recording her evidence according to law, in the presence of the accused, after identification by some approved female witnesses.

COMPENSATION.

Reg. v. Gourchurn Doss & others, 11 S. W. R. Cr. R. 53.

The award of compensation referred to in section 44 of the Code of Criminal Procedure (Act XXV of 1861) should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be found upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial.

Reg. v. Jellappa Bin Mudakappa, 1 Bom. Rep. 181.

Subordinate Magistrates of the 2nd class have no power to award fines to accused as compensation for frivolous and vexatious prosecutions, except in cases in which a summons on complaint shall ordinarily issue.

Reg. v. Barjoo Koormee, 5 S. W. R. Cr. R. 76.

The compensation awarded under section 44 of the Code of Criminal Procedure (Act XXV of 1861) to the person injured in consideration of the loss which he has suffered, corresponds to damages awarded in civil proceedings.

Reg. v. Lalloo Singh & others, 8 S. W. R. Cr. R. 54.

Section 270, Code of Criminal Procedure (Act XXV of 1861) (authorizing the award by a Magistrate of amends in cases of false complaints) applies only to complaints made and cases tried under Chapter XV of the Code, and is limited to cases punishable under the Penal Code with imprisonment for a period not exceeding six months.

Rs. 50 is the measure of compensation awardable from any complainant, irrespective of the number of accused persons.

Semble :—Criminal trespass is a part of the offence of mischief committed upon land as well as of house-breaking by night.

Reg. v. Nijanund, 3 S. W. R. Cr. R. 60.

A fine cannot be awarded as compensation in a case falling under Chapter XIV, Code of Criminal Procedure (Act XXV of 1861). In a case falling under Chapter XV, Code of Criminal Procedure the statement of the complainant, the evidence of the witnesses, and the reply of the accused should be recorded.

Reg. v. Rupan Rai, 6 B. L. R. 296; S. C. 15 S. W. R. Cr. R. 9.

When a prosecutor fails to substantiate his charge, by making contradictory statements, the Magistrate who tries the case under Chapter XV of the Criminal Procedure Code can award compensation to the accused, although he commit the prosecutor to take his trial on a charge of giving false evidence.

Juhoorun v. Girdharee Ram & another, 3 S. W. R. Cr. R. 70.

Fine is not awardable as compensation for a false charge of the theft.

Chide Chowbee v. Bhowany & Jhan, 1 S. W. R. Cr. R. 1.

Although section 270 of the Code of Criminal Procedure (Act XXV of 1861) forbids compensation to a person falsely and vexatiously charged with theft, yet the law does not prevent a Magistrate from fining an unjust accuser.

Rateeah v. Phokonder, 5 S. W. R. Cr. 1.

Amends cannot be awarded in a case under section 374 of the Penal Code (unlawful compulsory labour) which comes under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861).

Jalil Munshi v. Farnan Hossein, 6 S. W. R. Cr. R. 55.

Compensation cannot be awarded, under section 270, Code of Criminal Procedure (Act XXV of 1861) to a person charged with theft under section 380 of the Penal Code.

Jharu v. Bahar Ali & others, 7 S. W. R. Cr. R. 11.

Amends cannot be awarded in a case of wrongful confinement.

Dhurai Noshyo v. Hubee Noshyo, 7 S. W. R. Cr. R. 12.

Amends cannot be awarded in a case of house-breaking by night or theft.

Chootoo Dhoon Bharbhonia v. Abdool Meah & others, 7 S. W. R. Cr. R. 40.

Amends cannot be awarded in a case of theft.

Rooplall Sing, Case of, 10 S. W. R. Cr. R. 39.

Compensation under section 44 of the Code of Criminal Procedure (Act XXV of 1861) cannot be awarded to any one excepting the person who has directly suffered by the offence. It cannot be given to the heirs of a person who has been killed.

Modhoosoodun Ghose alias Madhub Chunder Ghose v. Joyram Hazrah & others, 13 S. W. R. Cr. R. 39.

Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Chapter XV and one under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861), a Magistrate may award amends to the accused under section 270 of the Code if he considers the charge with reference to the cases under Chapter XV to have been vexatious.

Bhyroolall, petitioner, 14 S. W. R. Cr. R. 75.

Since the passing of Act VIII of 1869 a Magistrate may, under section 270 in a case in which more than one person has been accused, award compensation not exceeding 50 rupees to each person.

Azgur Howladar v. Asaruddin & others, 17 S. W. R. Cr. R. 1.

Where a complaint constituted a charge of wrongful confinement under section 343, and not one of criminal force under section 352 of the Penal Code, the order awarding amends under section 270, Code of Criminal Procedure (Act XXV of 1861) was quashed as illegal.

Gunamanee v. Haree Datta, 18 S. W. R. Cr. R. 6.

An award of compensation under section 270, Code of Criminal Procedure (Act XXV of 1861) was set aside as illegal in a case of criminal force and theft or robbery, because the charge was in part one of theft or robbery, which did not come under Chapter XV and because criminal force really was used to the complainant.

Nobokristo Archarjee v. Lall Chand Sheikh, 20 S. W. R. Cr. R. 38.

In a case in which the accused was charged with having stolen a pony, the Magistrate sentenced the accused to imprisonment, and awarded a fine of rupees 25 which he ordered should, if realized, be paid over to the complainant, directing at the same time that the pony should be restored to a third party, by whom it had been purchased *bonâ fide* at a public sale, the Magistrate relying on section 418, Code of Criminal Procedure (Act X of 1872), and on the rule of English law protecting a *bonâ fide* purchaser in market overt. The Sessions Judge considered that section 418 was not intended to supersede section 108, Act IX of 1872, and that, as under the latter law, the property in the pony did not pass to the third party, purchaser, the pony should have been restored to the prosecutor. Held, that the fine of Rs. 25 imposed upon the prisoner could not be paid over to the complainant, either under section 418, Code of Criminal Procedure, or under any supposed rule of law relating to sales in market overt, and that if any such order could be made, it would be under section 308 of the Code of Criminal Procedure, the order so far as it directed that the fine be paid to the complaiuant was accordingly set aside.

Jitan Khan v. Durga Singh & others, 20 S. W. R. Cr. R. 59.

In a case in which the complainant charged the accused with cutting and forcibly carrying away his crop of paddy, the Assistant Magistrate directed the crop to be attached, and deputed an Ameen to hold a local investigation, and subsequently, after examining the Ameen, but without taking the evidence for the prosecution, he held the complaint to be a false one, and ordered that the complainant should pay a compensation to the accused, and that the crop should be made over to the accused. The High Court set aside the Assistant Magistrate's order, and ordered that the money paid under it should be returned to the complainant, and that the case should be re-tried by a Magistrate after recording the evidence of the complainant and his witnesses.

Radhanath Panaj v. Woomachurn Chowdhry, 22 S. W. R. Cr. R. 12.

Where a formal charge has been drawn up, and the accused tried and acquitted, the acquittal should be one under section 220, Code of Criminal Procedure (Act X of 1872) and not under section 211, and therefore no compensation can be awarded to the accused under section 209 in such a case.

Bisheshwar Shaha v. Bishwambhur Sircar & others, 23 S. W. R. Cr. R. 65.

A Magistrate in making an order for compensation under section 209, Code of Criminal Procedure (Act X of 1872) is bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay, but if such person admits he has no goods, and thereby waives the right to have the amount levied by distress, the Magistrate may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment.

Mona Sheikh v. Ishan Bardhan, 6 I. L. R. Calc. 581.

An order for compensation against a complainant may be made on an order of acquittal under section 211 of the Criminal Procedure Code (Act X of 1872).

Adrain v. Hurbullub & others, 2 N. W. P. Rep. All. 58.

The compensation or award which a Magistrate, who dismisses a complaint as frivolous or vexatious, is empowered in his discretion to award to an accused person, does not deprive the latter of any right of suit in the Civil Court which he may possess.

Reg. v. Gopal, 2 N. W. P. Rep. All. 430.

Under section 270 of the Criminal Procedure Code (Act XXV of 1861) a Magistrate dismissing a complaint as frivolous or vexatious can only award a sum not exceeding Rs. 50 to the accused by way of compensation, and cannot impose it by way of fine, nor can he directly sentence the complainant to imprisonment in default of payment.

Reg. v. Balkissen, 2 N. W. P. Rep. All. 447.

A Magistrate is not authorized under section 270 of the Criminal Procedure Code (Act XXV of 1861) to award compensation from the complainant to the accused in respect of an unfounded charge brought against such accused of being a person of bad character or repute.

Reg. v. Turner & Kelly, 4 N. W. P. Rep. All. 94.

The power of Magistrates to award compensation to accused persons against whom frivolous and vexatious complaints have been made, is not confined to complaints brought under the provisions of the Penal Code.

Number v. Ambu & others, 5 I. L. R. Mad. 381.

The fact that the accused has been tried and acquitted, is no bar to the award of compensation under section 209 of the Code of Criminal Procedure, 1872.

Reg. v. Reddon, 6 I. L. R. Mad. 286.

Where a person has been convicted of theft and sentenced to a fine, section 308 of the Code of Criminal Procedure, 1872, does not authorize a Magistrate to award part of the fine as compensation to a person who has innocently purchased the stolen property.

Somu v. The Queen, 6 I. L. R. Mad. 316.

Where the complaint, and the proof adduced in support thereof, showed that the accused persons, if guilty at all, were guilty of offences not triable under Chapter XVI of the Code of Criminal Procedure, 1872, and the Magistrate issued a summons to answer a charge for assault under section 352 of the Indian Penal Code, and, after examining the witnesses for the complainant, discharged the accused and awarded compensation to the accused under section 209 of the Code of Criminal Procedure, 1872; Held, that the order awarding compensation was illegal.

Keshav Lakshman in re, 1 I. L. R. Bom. 175.

A Kárkun on the establishment of a Civil Court, entrusted with the execution of a writ, reported to the Court that a particular person obstructed him in attaching property as commanded by the writ; and a report was thereupon made by the Court to a Magistrate, with a view to proceedings being taken against the obstructor. The Magistrate acquitted the accused and ordered the Kárkun to pay the accused compensation under section 209 of the Criminal Procedure Code (Act X of 1872). Held, that such last mentioned order was wrong, the Kárkun not being a complainant, and he, having acted judicially, was not liable to the penalty provided in section 209 of the Criminal Procedure Code.

Proceedings of 17th Aug. 1869, 4 Mad. Rep. Rul. 68.

An order directing compensation under Act XIII of 1859 is illegal. Such portion of the money advanced to the defendant as has been appropriated to the fulfilment of the contract, or as could justly be set off against a part fulfilment of the contract, ought not to be ordered to be refunded.

Proceedings of 4th Nov. 1870, 5 Mad. Rep. Rul. 40.

In a trial for causing hurt, the Sub-Magistrate awarded compensation to the defendant for a frivolous and vexatious complaint under section 270 of the Code of Criminal Procedure (Act XXV of 1861). Held, that the section did not apply to such a case.

Proceedings of 27th Feb. 1875, 8 Mad. Rep. Rul. 7.

The special provisions of section 209 of the Criminal Procedure (Act X of 1872) are applicable only in the case of original trials under Chapter XVI of the Code.

Reg. v. Samsen Babaji, 3 Bom. Rep. Crown Cases, 43.

On a reference by a Session Judge, an order made by a Magistrate under section 44 of the Criminal Procedure Code (Act XXV of 1861) awarding compensation to the complainant out of a fine inflicted for causing hurt—reversed: as there was no evidence on the record to show that "loss" was caused or that "any special damage of a pecuniary nature, resulted" to the complainant by the offence.

Reg. v. Ramji valad Daji, 5 Bom. Rep. Crown Cases, 12.

Amends, under section 270 of the Code of Criminal Procedure (Act XXV of 1861) are awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue.

Reg. v. Yessappa bin Ningappa, 5 Bom. Rep. Crown Cases, 41.

Where loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.

Reg. v. Gurningapa et al., 7 Bom. Rep. Crown Cases, 58.

Where, on a complaint being preferred to a Magistrate of an offence not coming within Chapter XV of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate alters it so as to bring it under Chapter XV, he cannot award compensation to the accused, under section 270 of the Criminal Procedure Code, the offence originally complained of not being one for which compensation can be awarded.

Reg. v. Shivbasapa, 7 Bom. Rep. Crown Cases, 73.

An award of compensation to the widow of a person who died in consequence of a fall into a pit, negligently dug by the accused, from the fine imposed on the latter, is illegal.

Reg. v. Hossein Jan & another, 2 Ind. Jur. N. S. 190.

The High Court has power to award by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its Original Criminal Jurisdiction.

Proceedings of 29th April, 1867. Weir, 283.

No appeal lies against an order awarding compensation for a frivolous or vexatious complaint, but such an award will not bar a prosecution of the complainant under section 211 of the Penal Code.

Proceedings of 14th Feb., 1873. Weir, 284.

The award of compensation for a frivolous and vexatious complaint can only be made in a "summons case" triable under Chapter XVI.

Proceedings of 12th Nov., 1875. Weir, 285.

A complaint may be both frivolous and false. The award of compensation for making a frivolous complaint does not preclude the Magistrate who makes it from subsequently sanctioning a prosecution for making a false complaint.

Ponnammal, Complainant. Weir, 286.

A false complaint held to be a vexatious complaint.

Proceedings of 18th July, 1879. Weir, 286.

An award of compensation for a frivolous and vexatious complaint of illegally impounding cattle is unauthorized, illegal seizure of cattle not being an offence, and therefore not within the definition of a "summons case."

Proceedings of 14th Dec., 1880. Weir, 288.

Compensation for a frivolous and vexatious complaint may be awarded after the evidence for the defence has been heard. The ruling in High Court's Proceedings, 22nd November 1879, overruled.

Dhurai Noshyo v. Hubee Noshyo, 7 S. W. R. Cr. R. 12.

Amends cannot be awarded in a case of house-breaking by night or theft, nor in a case of theft. Chootoo Dhoon Bharbhonia *v.* Abdool Meah & others, S. W. R. 1864, Cr. 40.

Jalil Munshi v. Farnan Hossein, S. W. R. 1864, Cr. R. 55.

Compensation cannot be awarded, under section 270, Code of Criminal Procedure (Act XXV of 1861) to a person charged with theft under section 380 of the Penal Code.

COMPLAINT.

Reg. v. Abdool Azeez Khan, 14 S. W. R. Cr. R. 36.

A Magistrate is bound, with reference to section 20 of the Code of Criminal Procedure (Act XXV of 1861) to proceed in the investigation of cases arising under a special law (such as the salt law) according to all the provisions of the Code of Criminal Procedure.

Section 270 of the Code of Criminal Procedure does not apply to complaints under a special law, but only to complaints triable by the Magistrate and punishable under the Penal Code with imprisonment for a period not exceeding six months.

Reg. v. Nubas Muhton, 8 S. W. R. Cr. R. 65.

If a complaint is duly made before a Magistrate, and the act imputed appears to amount to an offence, and there is *primâ facie* reason to suppose the accusation true, the Magistrate is bound to proceed though he may consider a civil suit more applicable.

Reg. v. Russick Monee, 11 S. W. R. Cr. R. 54.

The High Court refused to interfere with an order of a Magistrate, by which he dismissed a complaint of theft, because it appeared to him, after making enquiries from the police before whom the complaint was in the first instance brought, that the complaint was not one that the Criminal Court should entertain, but in respect to which a suit in the Civil Court should be brought.

Ashanoollah & others, case of, 10 S. W. R. Cr. R. 21.

Under the Code of Criminal Procedure (Act XXV of 1861), a Magistrate has only jurisdiction to entertain a criminal charge, either when a complaint is made before him by a person properly qualified to complain and prosecute, or when he himself of his own knowledge and discretion starts the proceedings in cases in which he has such power given him. Where, therefore, a Registrar under Act XX of 1866, transferred a complaint made

before him to the Magistrate's Court, and afterwards himself sitting as a Magistrate, ordered the matter to be made over to the police, it was held that this did not amount to the institution of a criminal charge under the Criminal Procedure Code.

Khosal Singh v. Toolshee Chowdhry & others, 10 S. W. R. Cr. R. 40.

A charge properly laid under the Penal Code should be investigated, even if the case be one in which a civil action will lie.

Bisseshur Roy v. Hurpershad Singh & others, 11 S. W. R. Cr. R. 1.

The power which a Magistrate of a district, or a Magistrate in charge of a division of a district, has to issue a summons without any complaint, is not affected by the circumstance, that it appeared that the offence with which the accused was charged, came to the knowledge of the Magistrate, otherwise than through a petition which was presented against the accused.

Kalidass Bhuttacharjee v. Mohendronath Chatterjee, 12 S. W. R. Cr. R. 40.

A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled, and the proper procedure is observed. He may recall an order which he finds to be wrong, and substitute any other which he may think right under the law.

Bhugoban Chunder Poddar v. Mohun Chunder Chuckerbutty & others, 12 S. W. R. Cr. R. 49.

The various modes in which criminal proceedings can be instituted under the Code of Criminal Procedure (Act XXV of 1861) pointed out. Where a Civil Court makes over a case to a Magistrate for investigation, the Magistrate ought to examine the complainant and reduce the examination into writing, which should be signed by the Magistrate and the complainant. Section 273 Code of Criminal Procedure (Act XXV of 1861), only empowers a superior Magistrate to refer cases to a subordinate Magistrate, when the complaint is made to himself or before a police officer, but not cases where he himself takes cognizance of an offence.

Ameer Mahomed v. G. Brass, 14 S. W. R. Cr. R. 36.

A Magistrate cannot refuse a summons to a complainant, even in a case in which the charge might have been laid at the police in the first instance, but is bound, under section 66 of the Code of Criminal Procedure (Act XXV of 1861) to examine the complainant on oath and pass orders on the case.

Nilmoney Bhuttacharjee reference, 16 S. W. R. Cr. R. 58.

Under section 66, Code of Criminal Procedure (Act XXV of 1861) a Magistrate is bound to examine the complainant and record his deposition, and then to pass orders for summons or otherwise as may be necessary.

Jungi Khan v. Hur Chunder Rai, 16 S. W. R. Cr. R. 59.

In a case apparently coming under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) where the complainant has deposed on solemn affirmation, the mere denial of the accused proves nothing. The complainant's witnesses should be examined, and the investigation proceeded with.

Kabil Nusyo Pyada v. Baharullah & others, 17 S. W. R. Cr. R. 37.

The not examining a complainant, and not reducing his examination into writing, is not such an irregularity as to require the interference of the High Court in a trivial case, unless it appears probable (of which there was no suggestion in the present case) that a fresh investigation would produce a different result.

Roy Luchmiput Singh, petitioner, 18 S. W. R. Cr. R. 43.

A Joint-Magistrate who has been vested with the full powers of a Magistrate of a district, and to whom a case is duly made over by the Magistrate, is competent, under sections 15, 23 and 68 of the Code of Criminal Procedure (Act XXV of 1861) to initiate proceedings without any formal complaint against parties other than those mentioned in the original complaint.

Dwarkanath Mazoomdar v. Nalu Das, 21 S. W. R. Cr. R. 89.

In this case the charge was originally one of dacoity under section 395, Penal Code, and the proceedings were first conducted under Chapter XVIII of the Code of Criminal Procedure (Act X of 1872), but during the progress of the case, the charge under section 395 was lost sight of, and the accused were put on their defence on a charge of being members of an unlawful assembly under section 143, Penal Code, and the proceedings were continued under Chapter XVII of the Procedure Code in a summary way. Held, that had the complaint been one under section 143, Penal Code, the Magistrate could, under section 222, Code of Criminal Procedure, have tried it in a summary manner under Chapter XVIII; but as the complaint was of a charge of dacoity under section 395, the Magistrate had no jurisdiction to try the case in a summary manner, but should have enquired into it in a regular manner under Chapter XVIII, Code of Criminal Procedure.

Mudoosoodun Sha v. Hari Dass Dass, 22 S. W. R. Cr. R. 40.

Under section 203, Code of Criminal Procedure (Act X of 1872), a Magistrate may convict the accused person, who has been summoned before him on the footing of a complaint, of any offence which is the subject of the definition in section 148, if he thinks that the facts established by the complainant and his evidence only amount to an offence within that section.

Where the Magistrate treats the complaint throughout as substantially a summons case, and follows the procedure which is applicable to such a case, he is at liberty, under section 208, Code of Criminal Procedure (Act X of 1872) if he adjourns the case to a future day, to dismiss the complaint if the complainant does not appear on the day on which the hearing has been duly postponed.

Judoonundon Lall & others, petitioners, 24 S. W. R. Cr. R. 22.

Where the complainants were *purdah nushin* ladies, and the Deputy Magistrate went to their residence, and took their depositions in the presence of the accused, who had no opportunity of cross-examining, in as much as the deponents were in a shut-up room: Held, that the Deputy Magistrate's procedure was unusual and uncalled for, and the accused was prejudiced by the way in which the examination was taken; and that the complainants should have been called upon to make their charge through some one who knew the facts.

Reg. v. Haru & another, 9 B. L. R. 146.

A District Magistrate is not bound, on receipt of a complaint, to examine the complainant under section 66 of Act XXV of 1861, before referring the complaint to a Subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient.

Reg. v. Umeschandra Chowdry, 9 B. L. R. 147 note.

In this case the Sessions Judge of Beerbhoom made a reference to the High Court, under section 434 of Act XXV of 1861, to have the sentence of the Deputy Magistrate quashed, on the ground that the Magistrate of the District, without examining the complainant, and reducing the examination into writing, and signing his name as Magistrate to such examination, referred the petition to the Deputy Magistrate for trial contrary to section 66 of Act XXV of 1861. In making the reference, the Sessions Judge cited as an authority the case of Reg. *v* Mahimchandra Chuckerbutty (3 B. L. R. A. Cr. 67). KEMP, J.:—"In the case of Reg. *v.* Mahimchandra Chuckerbutty referred to by the Judge, there was a statement, but it was not such a statement as to amount to the complaint contemplated by section 66 of the Code of Criminal Procedure. In the case referred to us, the Magistrate sent the petition presented by the complainant to the Deputy Magistrate, who exercises the full powers of a Magistrate. We think that under section 66 of the Procedure Code and the Circular Order, No. 6, dated the 16th May 1864, the Magistrate of the District was justified in making over the petition to the Deputy Magistrate for enquiry and trial. But see *per* KEMP, J. Iswarchandra *v.* Umeshchandra Pal (8 B. L, R. 19) and *per* GLOVER, J. (KEMP, J. concurring) in Reg. *v.* Girishchandra Ghose (7 B. L. R. 503).

Ujjala Bewa in re, 1 C. L. R. 523.

A complaint was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant. In the course of the proceedings it appeared that the wife had committed bigamy (section 494 Indian Penal Code). The Magistrate without a further complaint committed the woman alone for trial by the Court of Session. Held, that the Magistrate had acted within his jurisdiction; section 142 of the Code of Criminal Procedure (Act X of 1862) being designed to prevent a Magistrate from inquiring without complaint into a case connected with marriage; but, when a case is properly before the Magistrate, he may proceed against any person implicated.

Proceedings of 24th March, 1872. 7 Mad. Rep. Rul. 25.

Accused was convicted by a 2nd class Taluq Magistrate of insult with intent to provoke a breach of the peace. No formal complaint was entered in the record until after sentence was passed.

The 2nd class Magistrate not being authorized to entertain cases without complaint, the District Magistrate submitted that the whole proceedings were void under section 34, clause 2 of the Code of Criminal Procedure (Act X of 1872). Held, that the 2nd class Magistrate could not be said to have entertained the case without complaint, but that he acted in violation of section 144 in not reducing it to writing, and that, under section 283 an Appellate Court would have no power to reverse the judgment or sentence on the ground of this irregularity.

Proceedings of 18th Dec., 1873. 7 Mad. Rep. Rul. 31.

A complaint of theft of cocoanuts valued at 1 anna and 8 pies was made to a 3rd class Magistrate who returned the petition to the complainant, with an endorsement that he should obtain redress from the village Magistrate. Held, that the procedure of the Magistrate was unauthorized.

Proceedings of 16th February, 1875. 8 Mad. Rep. Rul. 2.

As soon as it becomes apparent that a complaint is of an offence falling within section 468 (*b*) of the Code of Criminal Procedure (Act X of 1872) and that it is made without sanction, the Magistrate is not competent to entertain it.

Reg. v. Sada Shivappa Pandurangappa, 5 Bom. Rep. Cr. Cases, 29.

Where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the issuing of a summons or warrant sections 66, and 43 Criminal Procedure Code, Act XXV of 1861) becomes immaterial.

Semble :—A Magistrate taking a complaint and issuing a summons thereon, acts not ministerially, but judicially. Conditions under which a Magistrate may proceed with an investigation or trial without a complaint upon oath considered, and cases bearing on the question reviewed and explained.

Reg. v. Fattechand Vastachand, 5 Bom. Rep. Crown Cases, 85.

Where a person gave information to a Magistrate and the police, of a murder having been committed, and subsequently, on the charge having been dismissed, petitioned the Session Judge to have the matter re-investigated: Held, that he was not a complainant within the meaning of section 360 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Dhondu Ramchandra, 5 Bom Rep. Crown Cases, 100.

Where a complaint laid before a Magistrate F. P. by certain Government employés, accused the prisoner of criminal of breach trust of their wages, but from the evidence adduced, it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money. It was held that the Magistrate F. P. had power to frame a charge against, and convict the prisoner of the latter offence without a fresh complaint being made to him.

A complaint preferred by a Munsif under section 168 of the Criminal Procedure Code (Act XXV of 1861) need not, though it do not bear the seal of the Munsif's Court, be on stamped paper.

Reg. v. Sajjan valad Vithu, 5 Bom. Rep. Crown Cases, 104.

The illegal seizure and detention of cattle, to which section 14 of Act III of 1857 refers, is not an "offence" within the meaning of section 31, and Schedule II, No. 1, Cl. (B.) of the Court Fees' Act, VII of 1870. Complaints of such illegal seizure and detention do not require a stamp. If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant.

Reg. v. Avji bin Naru et al. 8 Bom Rep. Crown Cases, 22.

In cases in which the police cannot arrest without a warrant, a warrant cannot be legally issued by a Magistrate except on a complaint made upon oath (or under the provisions of section 68) whether the Magistrate issuing the warrant is authorized to entertain cases either on complaint preferred directly to himself, or on the report of a police officer, under section 66 A. of the Criminal Procedure Code or not.

Reg. v. Jafar Ali, 8 Bom. Rep. Crown Cases, 113.

The report of a police officer referred to in the above section means, not any communication made by a police officer, but the formal report drawn up under section 155 of the Criminal Procedure Code, in cases in which the police may arrest without warrant.

At an inquiry held, by a Magistrate under section 180, of the Criminal Procedure Code, (Act XXV of 1891), for the purpose of ascertaining the truth or falsehood of a complaint, the complainant has no right to be represented by a vakil, who, therefore, cannot sue the Magistrate for damages for not allowing him to appear for the complainant upon such an inquiry.

Bindachari v. Dracup, 8 Bom. Rep. Ap. Civ. 202.

It is competent to a Magistrate to receive and take action, on petitions relating to criminal charges when transmitted to him by post. Whether a Magistrate should do so or not is a matter within the Magistrate's discretion in each particular case.

Proceedings of 20th Sep, 1879. Weir, 265.

The prescribed mode of ascertaining what a complaint is, is to examine the complainant and reduce his examination to writing. It is irregular to endorse and return to a party his petition or complaint alleging an offence. What a party is entitled to, is an authenticated copy of the Magistrate's order on the proper stamp.

Proceedings of 10th June, 1869. Weir, 266.

The identity of the matter complained of, and of the persons complained against, is the proper criterion of the sameness of a complaint.

Proceedings of 14th Nov., 1878. Weir, 269.

COMMITMENT.

Reg. v. Anderson, 2 S. W. R. Cr. R. 65.

A Magistrate making an enquiry, with a view to commit, is bound to record specially the evidence on which the committal is made.

Reg. v. Bhohisan Mahatoon, S. W. R. 1864; Cr. R. 3.

A Sessions Judge is competent under section 435, Code of Criminal Procedure, (Act XXV of 1861) to order the committal of a person accused of giving false evidence, after the discharge of such person by the Magistrate, section 359, notwithstanding (*dissentiente* KEMP, J.)

Reg. v. Bunsee Singh, 1 S. W. R. Cr. R. 47.

A Collector trying a suit under Act X of 1859, has authority to commit to the Sessions Judge.

Reg. v. Dwarkanath Bose, 2 S. W. R. Cr. R. 31.

A Deputy Magistrate cannot commit a person for forgery under section 170 of the Code of Criminal Procedure (Act XXV of 1861), when the Civil Court has sanctioned the prisoner's committal under section 162, unless with the express sanction of that Court.

Reg. v. Hurnath Roy, 2 S. W. R. Cr. R. 50.

It is not illegal for a Magistrate to commit an accused person to the Sessions without examining him or his witnesses. The Magistrate, when he has prepared the charge, is bound to read it to the accused, and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the Sessions. The Magistrate cannot refuse to permit an accused person to attend at the Sessions by mooktear.

Reg. v. Issur Manjee, 5 S. W. R. Cr. R. 17.

A Judge is bound to state in his judgment, the evidence on which he convicts. The evidence in this case commented on, as well as the omission of the Magistrate to give in the grounds of commitment any particulars of the case.

Reg. v. Jeetun Khan, 11 S. W. R. Cr. R. 45.

The power conferred on a Court of Sessions by section 435 of the Code of Criminal Procedure (Act XXV of 1861) extends only to offences not triable by a Magistrate, and regarding which the accused has been discharged by the Magistrate.

Reg. v. Joyram Aheer, 11 S. W. R. Cr. R. 14.

The High Court has no power to set aside an order of a Magistrate acquitting an accused, nor can a Sessions Judge order the Magistrate to commit an accused whom the Magistrate has acquitted, on a charge which is triable by the Magistrate, such as grievous hurt (Act VIII of 1866).

Reg. v. Kishto Doba, 14 S. W. R. Cr. R. 16.

The necessity of making proper enquiries before committing to the Sessions pointed out. It is the duty of the police and the Magistrate, not only to bring the parties suspected, of being guilty to trial, but also to ascer-

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tain whether the suspected can clear themselves from the crime of which they are accused.

Reg. v. Komurooddee Sikhdar, 13 S. W. R. Cr. R. 17.

The fact of a commitment being made by a Joint-Magistrate, who is an officer exercising the powers of Magistrate, is sufficient, under section 359, Code of Criminal Procedure (Act XXV of 1861) to enable the Sessions Judge to proceed with the trial; and it lies with the party impugning the correctness of the proceedings to show that there was no jurisdiction.

Reg. v. Kurreem & another, 11 S. W. R. Cr. R. 16.

The commitment and trial together of several persons who are charged with having given false evidence in the same proceedings, should be avoided. A Court of Session is competent to try separately prisoners who have been committed together.

Reg. v. Mati Khowa, 3 B. L. R. A. Cr. 36; S. C. 12 S. W. R. Cr. R. 31.

A Judicial Commissioner has no power under section 172 of the Code of Criminal Procedure (Act XXV of 1861) to commit a witness for a false deposition given before the Assistant Commissioner. The evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him is a deposition taken before the Assistant Commissioner, it appears to have been taken in due form upon solemn affirmation, and is attested by the signature of the Assistant Commissioner" is not sufficient evidence of the prisoner having duly deposed.

Per NORMAN, J.:—*Quœre*,—notwithstanding the decision of the Full Bench as to the correctness of convictions for perjury upon alternative statements.

Reg. v. Mooktaram Chatterjee, 17 S. W. R. Cr. R. 44.

The accused was charged with two others, with criminal breach of trust. Evidence was taken in support of the charge of embezzlement; but considering that there was no evidence to convict him under section 408 of the Penal Code, the Assistant Magistrate charged him under section 208. Five days afterwards, he was charged with forgery, and called upon to plead to that charge, but no separate grounds of committal were drawn up. The High Court agreed with the Sessions Judge that the commitment in its present state was incomplete, and should be quashed.

Reg. v. Neetie Dulal, 8 S. W. R. Cr. R. 41.

Where a Magistrate used the words "acquittal and release" when he intendid only to discharge a person accused of an offence not triable by him, Held, that the Court of Session was competent under section 435, Code of Criminal Procedure (Act XXV of 1861) to order a commitment of such accused person.

Reg. v. Ramdhun Singh, 11 S. W. R. Cr. R. 22.

A Magistrate to whom the case of a person charged with giving false evidence in a judicial proceeding is transferred for investigation, cannot commit to the Sessions, without himself recording evidence, and examining the complainant and his witnesses in the presence of the accused.

Reg. v. Ramtohul Singh, 5 S. W. R. Cr. R. 12.

A Sessions Judge has no authority to interfere and direct a commitment, in the case of a conviction for assault under section 352, or of hurt under section 323 of the Penal Code, both of them being offences triable by the Subordinate Court.

Reg. v. Salim Sheik. 2 S. W. R. Cr. R. 57.

A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise.

Reg. v. Shama Sunker Biswas & Sham Churn Bose, 10 S. W. R. Cr. R. 25. S. C. 1 B. L. R. S. N. XVI.

The power of commitment given to a Court of Session by section 435, Code of Criminal Procedure (Act XXV of 1861) must be exercised judicially upon the evidence before the Court, and such Court ought not to order a commitment, unless the evidence appear to it sufficient for a conviction within the terms of section 226.

Where such discretion has been exercised, the High Court cannot enquire into the evidence, to see if it justifies the exercise of the discretion.

Reg. v. Sheetaram Chowdhry, 2 S. W. R. Cr. R. 44.

A Sessions Judge has discretion to order the commitment to the Court of Session of any accused person discharged by the Magistrate. The non-exercise of such discretion cannot be interfered with by the High Court.

Reg. v. Surrendro Nath Roy, 13 S. W. R. Cr. R. 27.

A commitment to Hazut before evidence is recorded, is illegal.

Wazir Singh, In the case of, 3 B. L. R. A. Cr. 65; S. C. 12 S. W. R. Cr. R. 46.

The Sessions Judge has no jurisdiction to annul a conviction, and order a commitment for an offence triable by a Magistrate. Section 435, Act VIII of 1869 relates to offences triable by the Sessions Judge.

Gokul Bandari, case of, 1 S. W. R. Cr. R. 8.

The Sessions Judge wished to cancel a commitment apparently on the ground of the evidence being insufficient. As the commitment was not illegal, he was ordered to try the case; Circular Order No. 7 having reference only to commitments altogether illegal.

Resolution on letter, 1 S. W. R. Cr. R. 5.

A Small Cause Court Judge, if it is his intention to proceed under section 173 of the Code of Criminal Procedure (Act XXV of 1861) should complete the investigation, and either commit or hold to bail the accused persons to take their trial before the Court of Session.

Moochee Mean, petitioner, 7 S. W. R. Cr. R. 38.

A Sessions Judge may, under section 435 of the Code of Criminal Procedure (Act XXV of 1861) after a Magistrate has discharged an accused person, order the Magistrate to commit the accused to the Sessions.

Hakin Sirdar & another, case of, 10 S. W. R. Cr. R. 35 S. C. 2 B. L. R. S. N. 3.

A Sessions Judge cannot alter a commitment in a case which falls within the cognizance of a Magistrate, even though the Sessions Judge thinks the evidence proves that the accused was guilty of an offence beyond the Magistrate's cognizance. The High Court refused to interfere under section 434, Code of Criminal Procedure (Act XXV of 1861) on a reference in which the Sessions Judge ordered a commitment in such a case, although they considered that there was evidence to prove that the offence was one triable by the Court of Sessions.

Bhickaree Mullick & others, case of, 10 S. W. R. Cr. R. 50.

Where a case is committed to a Magistrate under section 277 of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate alone has jurisdiction, and cannot commit to the Sessions on the ground that he considers the sentence which he is empowered to inflict is insufficient.

Narain & Ram Naik, Case of, 14 S. W. R. Cr. R. 34.

A Court of Sessions, is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint.

Tarraproshad Sahoo, Case of, 15 S. W. R. Cr. R. 88.

The plain intention of the Legislature in section 171 of the Criminal Procedure Code (Act XXV of 1861) was that the Court before which an offence was committed, and by which the preliminary enquiry was made, should not be the Court to investigate, try or commit for trial.

Anunto Koyburt in re, 17 S. W. R. Cr. R. 14.

Prisoner, whilst under trial before the Sessions Court upon a charge framed under section 436 of the Penal Code (mischief by fire &c. with intent to destroy a house) was charged under section 224 with escaping from lawful custody. The Magistrate being too late to make the latter offence the subject of another charge in the same case, made a separate commitment of the prisoner, after he had been convicted of the former offence, for the latter offence, which was one cognizable by the Magistrate. The commitment was cancelled and the Magistrate directed to deal with the case himself.

Reg. v. Asgur Mullick, 19 S. W. R. Cr. R. 31.

The High Court quashed a commitment in a case in which the charge was that of adultery under section 497, Penal Code, where it appeared that the committing officer had no jurisdiction, by reason of the offence having been committed at places beyond the local limits of the Sessions division to which the accused was committed, and where the Sessions Judge considered that there was no evidence to found a charge of enticing away the complainant's wife within such jurisdiction.

Reg. v. Unnath Bundhoo Banerjee, 21 S. W. R. Cr. R. 37.

Under section 472, Code of Criminal Procedure (Act X of 1872) before a Sessions Judge can commit a person to the Court of Sessions, it is necessary that the offence should have been committed before the Sessions Court, and that it be one within the cognizance of, and triable exclusively by, that Court. The offence of intentionally giving false evidence (section 193, Penal Code) not being triable exclusively by the Sessions Court, is not one in which the Sessions Judge can commit.

Joy Kurn Singh v. Man Patuck, 21 S. W. R. Cr. R 41.

An order of commitment by a Sessions Judge under section 296 of the Code of Criminal Procedure (Act X of 1872) is bad in form if it does not specify the offence for which the parties are to be committed for trial to the Sessions. A trial for the offence of cheating is not a Sessions case within the meaning of section 296 having regard to the first portion of the definition of Sessions case in section 4 of the Code, which must be read as if the word "only" followed the words "triable by a Court of Session."

Reg v. Rungatoonee & others, 22 S. W. R. Cr. R. 52.

A Civil Court has no power to order the commitment of persons for offences under sections 471, 465 and 193 of the Penal Code without holding the preliminary enquiry required by section 474 of the Criminal Procedure Code (Act X of 1872).

Bundhoo & another, petitioners, 22 S. W. R. Cr. R. 67.

The Sessions Judge under section 296, Criminal Procedure Code (Act X of 1872) made an order upon the Deputy Magistrate for the commitment of the accused who had previously been discharged by the Deputy Magistrate, but it was alleged that such order of the Sessions Judge was made without calling upon the petitioners to show cause in the matter; Held, that, although there is nothing in the section 296 with regard to summoning or giving notice to the accused person, no person should be affected in his personal liberty without having opportunity given him to answer the charge for which he is arrested and put into prison. The Court accordingly were of opinion that, if the accused had no opportunity given them of meeting the charge, the commitment was not a good commitment.

Reg. v. Mullik Jeechoo, 23 S. W. R. Cr. R. 12.

A party, charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound under section 349, Code of Criminal Procedure (Act X of 1872) to commit on the original charge of murder, and not on that of giving false evidence, and he recommended that the order of commitment should be quashed, and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere as there was evidence on the record tending to

support the charge for giving false evidence, and as section 349 did not have the effect of taking away from Magistrates the power to entertain a charge of this kind.

Kaliprosunno Bagchee, petitioner, 23 S. W. R. Cr. R. 39.

Under section 471, Criminal Procedure Code (Act X of 1872), the Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused, and after being so satisfied, it must either commit the case, or send the case to the Magistrate for enquiry whether a committal should be made or not.

Nowab Sing v. Kokil Sing & another, 24 S. W. R. Cr. R. 70.

A Court of Session has no power under the Code of Criminal Procedure (Act X of 1872), section 296 to direct the commitment for trial of persons against whom no evidence has been legally recorded, or of persons upon whom no notice has been served.

Reg. v. Tarucknath Mookerjee, 10 B. L. R. 285.

An order by a Judge, under section 296 of Act X of 1872, directing a Magistrate to commit an accused person who has been discharged at a preliminary enquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a committal for offences with which the accused was in no way charged before the Magistrate.

Empress v. Kudrutoollah & others, 3 I. L. R. Calc. 495; S. C. 2 C. L. R. 2.

Section 221 of the Criminal Procedure Code authorizes a Magistrate, after a charge has been drawn up, to stop further proceedings, and commit for trial. Although the explanation to section 220 (Criminal Procedure Code, Act X of 1872) provides that, if a charge is drawn up, the prisoner must be either convicted or acquitted, it does not require, that the conviction or acquittal, should be by the Magistrate who drew the charge.

Empress Futteh Jyah Khan & others, 4 I. L. R. Calc. 570; S. C. 3 C. L. R. 599.

A Court of Sessions has no power to commit to itself for trial, a case not triable exclusively by such Sessions Court. The words "commit the case itself" in section 471 of the Code of Criminal Procedure cannot (when read in connection with section 231) be held to empower a Sessions Court to commit such a case to itself.

Empress v. Khamir, 7 I. L. R. Calc. 662.

A Sessions Court has no power, under section 296 of the Criminal Procedure Code (Act X of 1872) to direct the commitment of a person discharged by a Deputy Magistrate, without first giving such person an opportunity of showing cause against such commitment.

But under section 296, as amended by Act XI of 1874, the Court has power to direct the subordinate Court to enquire into any offences for which it considers a commitment should be ordered.

When, however, a trial under such a commitment made by order of a Sessions Judge has been duly held, and no actual failure of justice has been caused by the error of the Sessions Judge, section 283 of the Criminal Procedure Code, would be a bar to the reversal of his judgment.

Dwarkanath Bhuttacharjea & others, 1 C. L. R. 93.

Before a Court of Session can, under section 296, Code of Criminal Procedure (Act X of 1872), direct a Magistrate to commit the accused in a "Sessions case" which has been improperly dismissed under section 147, it is bound to give the accused person notice of the application for such an order, so that he may show cause why it should not be passed. Bundhoo, (22 S. W. R. 67); (Nowab, 24 S. W. R. 70) followed.

Empress v. Bhup Singh & another, 2 I. L. R. All. 570.

Certain persons were charged under section 417 of the Indian Penal Code, and were discharged by the Magistrate inquiring into the offence, under section 215 of Act X of 1872. The Court of Session considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of the District, suggesting to him to make the case over to a Subordinate Magistrate, with directions to inquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over, made an inquiry, and committed the accused persons for trial before the Court of Session, on charges under sections 363 and 420 of the Indian Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under section 296 of Act X of 1872, the case not being a "Sessions case," within the meaning of that section, and that the commitment was consequently illegal. Held, that there was no "direction to commit" within the meaning of that section, that is to say, to send the accused persons at once to the Sessions Court, without further enquiry, and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the inquiry upon the charges under sections 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate, and the commitment could not be impeached.

Empress v. Ilahi Bakhsh, 2 I. L. R. All. 910.

Held, where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person, and the sentence passed upon him at such a trial, were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial.

Empress v. Lachman Singh, 2 I. L. R. All. 398.

L. made a complaint against S. by petition, in which he only charged S. of having committed offences punishable under sections 193 and 218 of the Indian Penal Code, but in which he also accused S. of acts, which, if the accusation had been true, would have amounted to an offence punishable under section 466 of that Code with seven years' im-

prisonment. The Magistrate enquired into the charges against S. under sections 193 and 218 of the Indian Penal Code and directed his discharge. L. then applied to the Court of Session to direct S. to be committed for trial on the ground that he had been improperly discharged, which the Court of Session did, and S. was committed for trial charged under section 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under section 472 of Act X of 1872, charged L. with offences punishable under sections 193, 195, 211 and 109 of the Indian Penal Code, and committed him for trial. Held, that such commitment was not bad by reason that an offence under section 193 of the Indian Penal Code is not exclusively triable by a Court of Session. Held, also, *per* STUART, C. J. (SPANKIE, J. doubting) that the High Court is competent, in the exercise of its power of revision under section 297 of Act X of 1872, to quash a commitment made by a Court of Session under the provisions of section 472 of that Act. Held, also *per* SPANKIE, J. that the Court of Session was competent, notwithstanding that L. had only charged S. with offences under sections 193 and 218 of the Indian Penal Code, to charge L. with offences under sections 195 and 211, if such offences had come under its cognizance.

Empress v. Jagannath, 3 I. L. R. All. 258.

Section 33 of Act X of 1872 contemplates the contingency of a case which has been inquired into at the proper place, as indicated by section 63 of that Act, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment; and not of a case which has been inquired into in a district in which it was not committed, being committed to the proper Court of Session as indicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate inquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings in such case are illegal *ab inito*.

Reg. v. Lekhraj, 2 N. W. P. Rep. All. 132.

Where a Magistrate of a district, who had discharged a prisoner, was subsequently directed by the Sessions Judge to commit him for trial, and the commitment was eventually made by the Joint-Magistrate, held that such commitment was not illegal.

Although ordinarily, the order of the Sessions Judge would be directed to the Magistrate who had discharged the accused person, yet there is nothing in the Criminal Procedure Code (Act XXV of 1861) to prevent such Sessions Judge from directing a committal by any Magistrate who is authorized to make commitments. The law does not require the sanction to a prosecution to be given in any particular form of words, and it permits such sanction to be given at any time. When a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises.

Reg. v. Hiddun Khan, 2 N. W. P. Rep All. 285.

Where a Magistrate has convicted and sentenced a prisoner of an offence which such Magistrate was competent to try, and Sessions Judge considered the case so grievous that it should not have been disposed of summarily. Held, that such Sessions Judge was not competent to direct the Magistrate to commit the prisoner to the Sessions Court for trial upon the same charge.

Reg. v. Mata Dyal, 4 N. W. P. Rep. All. 6.

The Criminal Procedure Code (Act XXV of 1861) does not authorize the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions Judge is of opinion, that the order of commitment should be annulled as illegal, he should move the High Court to annul the same under section 404 of the Criminal Procedure Code.

Reg. v. Ghasee, 4 N. W. P. Rep. All. 50.

Where a Judge under section 435 of the Criminal Procedure Code, (Act XXV of 1861) had directed the Magistrate to commit certain accused persons, as also to take their defence, Held, that as the Magistrate could not require the accused to produce evidence nor to make a defence, the Judge should not have included such instructions in his order of commitment, but that the order was not therefore invalid.

Reg. v. Seethal Pershad, 5 N. W. P. Rep. All 168.

The Court of Sessions can only order the commitment of an accused person in cases exclusively triable by it.

Reg. v. Poorun, 5 N. W. P. Rep. All. 219.

The prisoner was committed to the Court of Session for trial on the 21st day of December 1872, and the record was sent to the Deputy Commissioner of Jaloun. Under the new Code of Criminal Procedure (Act X of 1872) which came into force on the 1st day of January 1873 the Deputy Commissioner was no longer a Court of Session, but received powers under section 36 to try, as a Magistrate, classes of cases which formerly he would have tried as a Court of Session. The Deputy Commissioner disregarding the commitment, took the case up afresh as a Magistrate of the District under section 36. Held, that this was clearly illegal, and that the Magistrate was bound to have sent the commitment on to the proper Court, and had no power—a trial being in progress, to commence a new enquiry in the same matter against the prisoner.

Reg. v. Maha Singh & others, 3 N. W. P. Rep. All. 27.

The duty of a committing officer is to ascertain whether by the evidence for the prosecution a *primâ facie* case is made out against the accused.

Reg. v. Ghasseeram, 3 N. W. P. Rep. All. 90.

When an enquiry has been made and the accused discharged, the Sessions Court may order the commitment of the accused, but cannot merely direct further enquiry.

Hassan Raza Khan in re, 7 N. W. P. Rep. All. 211.

The Court of Session has no power to set aside a commitment made under its direction. If it doubts the legality of the commitment it should make a reference to the High Court.

Chinnimarigadu in re, 1 I. L. R. Mad. 289.

A Magistrate to whom a case is referred for enhancement of punishment under section 46 of the Criminal Procedure Code (Act X of 1872), may order the committal of the case for trial by the Sessions Court.

Reg. v. Chinna Vedagiri Chetti, 4 I. L. R. Mad. 227.

Where a Magistrate committed a person, charged with perjury in a trial before himself, to the Sessions without examining the witnesses for the prosecution. Held, that the commitment was illegal.

Ward v. The Queen, 5 I. L. R. Mad. 33.

A European British subject committed by a Justice of the Peace in Mysore, for trial by the Judicial Commissioner of Mysore, on a charge under section 348 of the Indian Penal Code, was convicted on 10th March, 1880: Held, that the commitment and conviction were illegal.

Quære:—Whether, when a European British subject in Mysore, being a Christian, is accused of an offence not punishable with death, or transportation for life, a commitment to the High Court at Madras would be legal.

Reg. v. Kanjarnalai, 6 I. L. R. Mad. 372.

Where an accused person had been discharged by a Sub-Magistrate, and the District Magistrate directed the committal of the accused to the Court of Sessions, under section 436 of the Code of Criminal Procedure, 1882, without calling upon him to show cause why he should not be committed. Held, that the order of committal and the commitment made thereunder were illegal.

Imperatrix v. Abdulla, 4 I. L. R. Bom. 240.

The word "order" in section 46 of the Code of Criminal Procedure (Act X of 1872), associated as it is with the words "judgment and sentence," means a final order, *i. e.*, one disposing of a case so far as the Magistrate, to whom a Subordinate Magistrate submits the proceedings of the case for higher punishment, is concerned. It does not deprive that Magistrate of the exercise of his discretion as to its being a proper case for the Sessions, and of the power of committing it for trial given by section 143 of the Code of Criminal Procedure.

Imperatrix v. Popat Nathu, 4 I. L. R. Bom. 287.

The power of a Civil Court to commit a case to the Court of Session, after completing the preliminary enquiry, is given by section 474 of the Code of Criminal Procedure, (Act X of 1872), and is restricted to the class of cases provided in that section, *viz.*, where offences, exclusively triable by a Court of Session, are committed before the Civil Court. Section 471 deals with a more extended class of cases, *viz.*, all

those mentioned in sections 467, 468, and 469, in which not merely a Civil Court, but any Court, Civil or Criminal, and whether possessing, or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an inquiry; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or if it has not that power, or is not disposed to exercise it, it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged.

Proceedings of 9th Feb. 1869, 4 Mad. Rep. Rul. 31.

A Magistrate of the district has no power to direct a Subordinate Magistrate to commit for trial in the Session Court, accused persons who have been discharged by the Subordinate Magistrate, and such committal when made by the Subordinate Magistrate is illegal. The Session Court is the only authority empowered by law to direct a committal.

Proceedings of 21st July 1870, 5 Mad. Rep. Rul. 32.

Where the Session Judge is of opinion, that a Subordinate Magistrate has convicted the defendant of an offence which the Subordinate Magistrate has no power to try, the Session Judge may, under section 435 of the Code of Criminal Procedure (Act XXV of 1861) annul the conviction, and direct the committal of the accused for trial.

Proceedings of 23rd Jany., 1871. 6 Mad. Rep. Rul. 17.

A commitment by a Subordinate Magistrate to the Session Court with respect to offences not exclusively triable by the Session Court is good.

Proceedings of 20th Nov., 1871. 6 Mad. Rep. Rul. 41.

A Small Causes Court Judge sent a case for investigation to the Head Assistant Magistrate under the provisions of section 171 of the Criminal Procedure Code (Act XXV of 1861). The Head Assistant Magistrate transferred the case for investigation to the Subordinate Magistrate, who committed the case to the Sessions. Held, that the order of commitment was bad. Section 273 of the Code of Criminal Procedure is inapplicable to a case referred to a Magistrate under section 171.

Proceedings of 5th Nov., 1873. 7 Mad. Rep. Rul. 28.

A complaint was preferred before the Assistant Magistrate against two persons of an offence punishable under section 409 of the Penal Code. After enquiry they were discharged under section 215 of the Code of Criminal Procedure (Act X of 1872). Subsequently the Sessions Court directed their committal under section 296. Held, that the order of the Sessions Court was *ultra vires*.

Proceedings of 23rd Nov. 1874, 7 Mad. Rep. Rul. 40.

A Magistrate, after examining four witnesses for the prosecution, discharged the accused under section 195, Chapter XV of the Criminal Procedure Code (Act X of 1872). Subsequently, on becoming aware that there was a fifth witness present, the Magistrate cancelled his order of discharge, took further evidence, and committed the accused for trial to the Court of Session. Held, that the commitment was good.

Reg. v. Ranchoddas Nathubhai, 4 Bom. Rep. Crown Cases, 35.

A Court of Session cannot treat as a nullity the commitment of a Magistrate F. P. on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course.

Reg. v. Ravlojirav bin Hanmantrav, 5 Bom. Rep. Crown Cases, 7.

Held, that the committal of the accused to the Court of Session, by a Magistrate for trial on a charge under section 91 of the Indian Registration Act (XX of 1866), was legal. The Session Court was accordingly directed to try the accused.

Empress v. Jangbir, 4 I. L. R. All. 150.

A Magistrate having committed a person for trial by the Court of Session on a charge of adultery, immediately afterwards, on the representation of the prosecutor that he wished to withdraw from the prosecution discharged the accused. Held, that the order of discharge was bad, as under sections 196 and 197, Explanation, Criminal Procedure Code (Act X of 1872), a commitment once made can be quashed by the High Court only.

Taylor, W. in re, 2 Ind. Jur. N. S. 101.

The Coroner of Calcutta has no power to commit any person to prison pending an inquest. In cases where he has authority to commit, a commitment to the officer deputed to receive prisoners by the Statute in force is valid, and it is not necessary that the commitment be directed to the Sheriff.

Khamir, Appellant, in re, 10 C. L. R. 8.

Under section 296 of the Criminal Procedure Code (Act X of 1872), a Sessions Judge has power to direct a subordinate Court to enquire into offences in respect of which he considers a commitment to the Seesions Court should be made ; but where a person accused of an offence, has been discharged under section 215 of the Criminal Procedure Code, by a Magistrate duly empowered to try the offence, a Sessions Judge has no power to order the commitment of the accused without, at least giving him an opportunity of showing cause against it.

Where, however, such a commitment has been made, and a trial had thereunder, section 283 of the Criminal Procedure Code (Act X of 1872) is a bar to the reversal of the judgment of the Sessions Court, unless there has been an actual failure of justice caused by his error.

Empress v. Alim Mundle & others, 11 C. L. R. 55.

Where a Magistrate without jurisdiction commits an accused person to the Sessions Court, such commitment is void, and no reference to the High Court is necessary to have it set aside.

Empress v. Sagambur, 12 C. L. R. 120.

An accused who was charged with murder not being found, the witnesses were examined under section 327 of Act X of 1872, in his absence. The accused was subsequently arrested, and committed on the strength of the evidence taken in his absence. Before the Sessions Court he pleaded not guilty.

Held that the prisoner having been put upon his trial and having pleaded, the commitment could not be quashed. Held, that if in the course of a trial the Sessions Judge should be of opinion that the prosecution has not laid a proper basis for the reception of evidence in the absence of the accused, his proper course is to adjourn the trial under section 264 of the Criminal Procedure Code, and then, under section 351, summon such witnesses as he may deem material.

Semble:—The mere absence of questions in the record of a prisoner's statement do not render it inadmissible.

Govt. v. Hungsessur Sein, Ind. Jur. O. S. Sept. 1862.

Where a forged document is put in evidence before the Collector, the power of commitment rests with the Revenue Authorities, and does not, under any circumstances, extend to the Magistrate.

Proceedings of 23rd July, 1866. Weir, 228.

In the case of offences triable by the Magistracy concurrently with the Sessions Court, the Magistrate must use his discretion in determining whether a particular case should be committed to the Court, or whether the justice of the case will be met by a sentence which he himself is authorized to pass. In cases of theft, the amount of property stolen is one very proper point for consideration in determining this question, and every other circumstance of aggravation must be carefully weighed.

Proceedings of 18th March, 1868. Weir, 229.

If two or more persons are jointly charged with an offence, and the jurisdiction of the Magistrate is ousted in the case of one, the Magistrate should hold a preliminary inquiry and commit both or all for trial before the Sessions Court.

Proceedings of 12th July, 1871. Weir, 229.

Where an offence falls under two sections of the Penal Code, the one general and cognizable by an inferior tribunal, the other specifying aggravated circumstances and cognizable by a superior tribunal only, the jurisdiction of the inferior tribunal is not necessarily ousted.

Proceedings of 24th Feb., 1879. Weir, 231.

It is the duty of every Judge, if he considers that a committing Magistrate has acted erroneously in a judicial matter, to point out the error and to comment upon the action of the Magistrate.

Proceedings of 19th May, 1881. Weir, 235.

It is not competent to a District Magistrate to direct a Subordinate Magistrate to dispose of a case in a particular manner, *e. g.*, by commitment.

Proceedings of 10th Sept. 1881. Weir, 244.

Circumstances stated in which a Magistrate is justified in committing or bound to commit a case to the Court of Sessions.

The High Court observes that a Magistrate is justified in committing an accused person for trial by a Court of Session, where a *primâ facie* case is made out, that the accused has committed an offence cognizable by a Court of Session. In

other words, where there is evidence not obviously false, and on which, if it be accepted as reliable, a Court of Session might convict an accused person, the Magistrate is justified in sending up the case for trial, and if the case is triable by a Court of Sessions only, he is bound to do so.

Proceedings of 3rd Feb., 1868. Weir, 280.

Accused persons committed for trial to a Sessions Court, cannot be discharged without trial.

Charoo Chunder Mullick v. The Empress, 9 I. L. R. Calc. 397.

The words "or other proceeding" in section 147 of Act X of 1875, (High Court's Criminal Procedure Act), do not include a commitment, and no application to have a commitment quashed, can be entertained under the provisions of that section. Applications under section 14 of that Act should be disposed of by the High Court in the exercise of its Ordinary Original Criminal Jurisdiction.

Lachman v. Juala & others, 5 I. L. R. All. 161.

A Magistrate inquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial, where the evidence for the prosecution, if believed, would end in a conviction; but is competent, if he discredits such evidence, to discharge the accused.

The High Court can only interfere under section 297 of Act X of 1872 (Criminal Procedure Code) in such a case, if it comes to the conclusion that the Magistrate has illegally and improperly under-rated the value of such evidence.

The meaning of the words "sufficient grounds" in section 195 of that Act explained.

CONFISCATION.

Gunga Baee v. Hogg, 2 Ind. Jur. N. S. 124.

Where N. and M. were convicted of rebellion under Act XI of 1857, section 1, and sentenced, the former to be transported for life, and to have all his property confiscated, and the latter to have all his property confiscated; the sentence of confiscation was held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General does not restore the property. The Government having left the property of the convicts in the hands of the Administrator-General, as Administrator to the estate of the convict's father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its rights by virtue of the confiscation to other property of the convicts, the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of Amnesty (November 1858) coming after the conviction and confisca-

tion, had not the effect of re-vesting in the convict the property confiscated. Held also, that the property in question being Government paper was liable to confiscation, and lastly, that N.'s widow was not entitled to maintenance out of the property confiscated by the State.

Advocate-General of Bengal v. Ranee Surnomoyee, 1 S. W. R. P. C. 14.

The English law of forfeiture of the personal property of persons committing suicide, if ever applied to Europeans in India, is not applicable to natives. *Quære*:—Whether the law ever had existence as regards Europeans in India.

Jhundoo Singh & others, petitioners, 5 S. W. R. Cr. R. 8.

The Joint-Magistrate's order of confiscation set aside (1) because made without permitting the accused to show cause against the confiscation of his goods; (2) because the confiscation ought not to be carried out when the accused has been apprehended and brought to trial before the passing of the order; and (3) because the Joint-Magistrate acted in contravention of the order of the Magistrate releasing the property from attachment.

Behary Shaha v. Nubby Khan & others, 9 S. W. R. Cr. R. 13.

The procedure prescribed in sections 131 and 132 of Act XXV of 1861 must be followed before an order confiscating property is made.

Mussumat Izzutoolnissa Beebee v. Mussumat Husna Koour, 1 N. W. P. Rep. All. 151.

When a person has been tried and convicted in the Court of a Special Commissioner, an order of confiscation of his property should be made at the time of the trial and not subsequently.

Empress v. Nathu Khan, 4 I. L. R. All. 417.

No order confiscating forest-produce which is the property of Government in respect of which a forest-offence has been committed is necessary or can be made. All that need be done is to direct a forest-officer to take charge of such forest-produce. An order directing the confiscation of forest-produce not belonging to Government, in respect of which a forest-offence has been committed, can only be made at the time the offender is convicted.

The High Court is competent under section 297 of Act X of 1872 to revise an order made by a District Judge under section 58 of the Forests Act, 1878, on appeal from the order of a Magistrate made under section 54 of that Act, the jurisdiction of the High Court under section 297 of Act X of 1872 not being expressly taken away by section 58 of the Forests Act, 1878.

CONVICTION.

Reg. v. Bunk Behary & others, 1 S. W. R. Cr. R. 36.

Conviction of prisoners in two separate cases upon the evidence recorded in another case quashed as illegal, with a direction to the Deputy Magistrate to avoid making remarks in his proceedings calculated to foster bad feelings between planter and ryot.

Reg. v. Chand Bagdee & others, 7 S. W. R. Cr. R. 6.

A conviction upon no evidence is wrong in point of law. A Sessions Judge ought to record distinctly whether or not he agrees in the verdict of the jury.

Reg. v. Ichabur Dobey, 4 S. W. R. Cr. R. 11.

It is only when a Court, subordinate to a Court of Sessions, convicts a person of an offence not triable by such Court, that the Court of Sessions can annul the conviction and sentence.

If the prisoner is guilty of an offence beyond the jurisdiction of the Subordinate Court, the Court of Sessions should refer the case to the High Court.

Reg. v. The Justices of the Peace, 1 B. L. R. O. Cr. 41.

Sagur Dutt was convicted before a Justice of the Peace for using a warehouse &c. in the Town of Calcutta for the keeping and storing of jute, other than jute screwed for shipment, without a license, and for his said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction in which the offence was continued. Held, that the conviction was bad.

Reg. v. Kassimuddin, 8 S. W. R. Cr. R. 55.

That the facts proved would also constitute an offence under a section of the Penal Code, seems to be no reason for quashing a conviction under the special law, Act V of 1861.

Reg. v. Poorno Chunder Doss, 8 S. W. R. Cr. R. 59.

Where a prisoner is convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded and the conviction confirmed.

Reg. v. Rajcoomar Singh, 8 S. W. R. Cr. R. 17.

A conviction and sentence arrived at by a Deputy Magistrate in the absence of the prisoner were quashed as irregular.

Reg. v. Srikant Charal, 2 B. L. R. F. B. 23; S. C. 10 S. W. R. Cr. R. 43.

A conviction of a prisoner on a plea of guilty before a Court of Session is valid, although there were no assessors.

Reg. v. Tarinee Mytee, 7 S. W. R. Cr. R. 13.

An alternative finding is perfectly legal.

Gunowree Bhooea & another, 6 S. W. R. Cr. R. 70.

A lower Court has no power to quash its own conviction though illegal.

Sameerooddeen & others, 6 S. W. R. Cr. R. 92.

Where the evidence for the prosecution was not taken, the prisoner was held to have been illegally convicted.

Reg. v. Peari Raur, 8 S. W. R. Cr. R. 40.

A conviction ought not to be reversed by reason merely of the weakness of the reasons assigned for it, when there is ample evidence of the guilt of the prisoners.

Reg. v. Ramdoyal Mahara, 21 S. W. R. Cr. R. 47.

A valid conviction arrived at by a Magistrate who had jurisdiction in the matter cannot be set aside, simply because, subsequent to the trial and conviction, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted.

Kulum Mundul v. Bhowani Prosad & others, 22 S. W. R. Cr. R. 32.

A conviction upon the statement of a complainant is lawful.

Fakeer Mahomed, petitioner, 24 S. W. R. Cr. R. 46.

F. brought a charge of assault against M. before a Bench of Magistrates, who, finding no evidence to show by whom complainant's arm had been broken, treated the case as one of simple hurt, and sentenced the accused accordingly. Complainant then applied for compensation to the District Magistrate, who instituted fresh proceedings and convicted the accused of grievous hurt. Held, that as the whole matter was one transaction, and went as a whole before the Bench of Magistrates, and as the facts were deposed to by the same witnesses before the Magistrate, the two convictions could not stand side by side. The proceedings before the Bench of Magistrates were accordingly quashed.

Edoo Khansamah, petitioner, 24 S. W. R. Cr. R. 64.

A conviction having been set aside as arrived at without jurisdiction, no sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained, the accused re-arrested, and without being called upon to plead, ordered to undergo the sentence previously passed:—Held, that the whole of these proceedings were illegal.

Kopil Dolai & others, v. Kanhai Jenna, 24 S. W. R. Cr. R. 71.

Where the imprisonment awarded on a summary conviction before a Magistrate had already expired, the High Court declined to go into the case on a reference from the Sessions Judge, because it would be no advantage to the prisoner to do so, and because, if the Magistrate's proceedings were quashed, the prisoner would be put to the risk of being tried again for the offence with which he had been charged.

Ali Meah v. The Magistrate of Chittagong, 25 S. W. R. Cr. R. 14.

It is irregular and illegal to base a conviction on evidence not recorded in the presence of the accused, but taken previously and merely read over to him on another day.

Grishchunder Nundee, petitioner, 26 S. W. R. Cr. R. 8.

Where a police officer who had been called on to answer to a charge of bribery, which was not sustained by the evidence, was found guilty of violation of duty under section 29, Act V of 1861 of which offence the trying officer found sufficient evidence in the course of the trial: Held, that an accused person called on to answer to a specific charge, cannot be convicted on an entirely different charge, without previous notice of the offence imputed to him, and opportunity being afforded him of meeting the accusation.

Empress v. Diljour Misser, 2 I. L. R. Calc. 225 F. B.

The prisoner was found guilty and sentenced under Regulation IV of 1797 to transportation for life, for a murder committed in 1861, before the Penal Code came into operation; and the case was sent up to the High Court to confirm the sentence. Regulation IV of 1797 was repealed by Act XVII of 1862, and that Act was wholly repealed by Acts VIII of 1869 and X of 1872. Held, on a reference to a Full Bench, that the conviction was illegal. Section 6 of Act I of 1868 which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.

Empress v. Panjah Singh, 6 I. L. R. Calc. 579.

Under clause (*h*) of section 227 of the Criminal Procedure Code (Act X of 1872) a Magistrate is not required to record any evidence, he should, in recording his reasons for the conviction, state them so, that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction. Where they were not so stated, the High Court, on motion, set the conviction aside.

Dowlat Sing, petitioner in re, 6 C. L. R. 273.

Although generally it is not necessary, in cases in which no appeal lies, for a Magistrate to record the reasons for passing his judgment, yet under clause (*h*) of section 227 of the Code of Criminal Procedure (Act X of 1872) in case of conviction, he ought to enter in the register to be kept under that section, a brief statement of the reasons for such conviction; but an omission to do so may, under some circumstances, be remedied at a subsequent time.

Reg. v. Hussun Ali, 5 N. W. P. Rep. All. 49.

A conviction under the Indian Penal Code, and also under a special law, in respect of one and the same offence, is illegal.

Proceedings of 8th April 1867, 3 Mad. Rep. App. 34.

A conviction based upon evidence taken in the absence of the accused, is illegal.

Proceedings of 12th Aug. 1869, 4 Mad. Rep. Rul. 66.

Where a Magistrate convicts a person of an offence, he is bound to pass some sentence.

Reg. v. Joao Thomesit Domingos Thomesit & another, 5 Bom. Rep. Crown Cases, 22.

Held, that an order of a Session Judge by which he altered a conviction by the Assistant Session Judge, of "dacoity" to one of "robbery" was illegal, not being an amendment of a sentence or order within the meaning of section 22 of the Criminal Procedure Code (Act XXV of 1861). Held further, that if the accused were, in the opinion of the Session Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence and to have left them to be charged with and tried for "robbery."

Reg. v. Naro Gopal, 5 Bom. Rep. Crown Cases, 56.

The High Court will not alter a conviction by a Session Court aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.

Government v. Lalawun Singh & others, 1 N. W. P. Rep. (Agra) 31.

The conviction of prisoners for two offences when the one offence formed an integral portion of the other, held to be in effect punishing twice for the same offence, and therefore illegal.

Reg. v. Hart, 1 Ind. Jur. N. S. 333.

Where a prisoner has been duly convicted of a criminal offence, and afterwards there turns up fresh evidence which would, in the opinion of the Judge, if it had been available at the trial, have produced an acquittal, the proper course to take is, not to acquit the prisoner, but to apply to the proper authority for a pardon.

Proceedings of 25th Oct., 1880. Weir, 356.

A conviction set aside on the ground that the evidence was illegally recorded in the form of a memorandum.

A defective investigation constitutes such material error as will justify the High Court in setting aside a conviction.

Reddi Ramaiya, prisoner. Weir, 324.

COUNSEL.

Counsel cannot claim as of right to be heard on a reference to the High Court under section 296 of the Criminal Procedure Code (Act X of 1872).

Reg. v. Devama & Somshekhar, 1 I. L. R. Bom 64.

No Advocate or Attorney of the High Court, or authorized pleader, appearing in defence of an accused person, under section 186 of the Criminal Procedure Code (Act X of 1872) should be required to file a vakalatnamah.

Proceedings of 23rd November, 1874. 7. Mad. Rep. Rul. 41.

Question as to the extent of the privilege of speech accorded to Counsel and Advocates considered Important statements made in verified petitions to the High Court, if untrue, should be contradicted on affidavit.

Reg. v. Kashinath Dinkar & others, 8 Bom. Rep. Crown Cases, 126.

Whether or not a private complainant is permitted, under section 59 of the Code of Criminal Procedure (Act X of 1872) to conduct a case as prosecutor, he may instruct Counsel who shall be entitled to appear under No. 7, Chapter XI of the High Court Rules, and the Public Prosecutor may, thereupon, avail himself of the Counsel's services under section 60. The effect of section 235 of the Code, read with sections 59 and 60, is to make every case tried by the Court of Session a case falling within the provisions of section 60, that is to say, the Public Prosecutor may thereupon, avail himself of the services of Counsel retained by a private individual, and in so doing, he does not deprive himself of the management of the case. Where the assistance of Counsel has once been accepted, that assistance is not excluded at the stages of the trial (summing up by the Prosecutor and his reply) to which sections 251 and 252 apply.

Narayan M. Pendshe in re, 11 Bom. Rep. 102.

Advocates, Vakils and Attorneys-at-law of the High Court are entitled to practice in all Criminal Courts subject to the control of the High Court.

Proceedings of 31st Oct., 1863. Weir, 271.

It is the duty of an Advocate or Pleader, when defending an accused person, to refrain from persisting in an accusation which he is satisfied on evidence is false, even although in so doing, he abandons the defence advanced by his client.

R. Rangappa & another, Appellants. Weir, 274.

DEAF AND DUMB ACCUSED.

Doobri Hulwai v. A dumb person, name unknown, 19 S. W. R. Cr. R. 37.

In a case of an accused person who was deaf and dumb, the Deputy Magistrate who tried and convicted him, considered that he did not understand the proceedings, and accordingly referred the case to the Magistrate under section 186 of the Code of Criminal Procedure (Act X of 1872). The Magistrate considered that the accused did understand what he was charged with. Held, that the finding of the Magistrate must prevail, and section 186 did not apply.

Acting under section 297, Code of Criminal Procedure, the High Court annulled the order of the Deputy Magistrate, and, as the accused had been previously convicted of an offence under Chapter XVII of the Penal Code punishable with three years' rigorous imprisonment, ordered that he should under section 315 of the Procedure Code be committed for trial to the Sessions Court.

Dwarkanath Haldar v. Noder Chand Kamte, 22 S. W. R. Cr. R. 35.

The High Court, under the circumstances of this case, which came before it under the last clause of section 186 of the Code of Criminal Procedure (Act X of 1872) set aside the conviction of the prisoner, who was deaf and dumb, and directed that he be admonished and discharged.

Reg. v. Bowka Hari, 22 S. W. R. Cr. R. 35.

The High Court may, under section 186, Code of Criminal Procedure (Act X of 1872) in the trial of a person who is deaf and dumb, and who cannot understand the proceedings against him or plead to the charge, treat the proceedings as amounting to a sufficient trial and pass sentence upon the prisoner according to the facts which seem to be established in the course, and as the result of those proceedings. In this case, the Court had no doubt that the prisoner was guilty, but before passing final orders, it gave the prisoner a further opportunity of being heard, and accordingly directed the Magistrate to give him notice.

Reg. v. Bowka, 22 S. W. R. Cr. R. 72.

Under the circumstances of this case in which a prisoner who was deaf and dumb, had a further opportunity given him of being heard in defence, the Court under section 186 of the Code of Criminal Procedure (Act X of 1872) confirmed the conviction by the Magistrate.

Reg. v. Ganga, 7 N. W. P. Rep. All. 131.

G. was convicted by the Joint-Magistrate of house-breaking by night, with intent to commit theft, and the case referred under the provisions of section 186 of Act X of 1872 to the High Court for orders. It appeared that G., whose understanding was of the most limited character, was caught at night in a house with some anklets in his possession. He was a lad of 15 or 16 years of age, and had been deaf and dumb from his birth. He sometimes lived with his father and sometimes by begging, and there was little doubt that hunger had driven him to break into the house. He had never been in arrest before. The Court recommended that he should be made over to his father.

A deaf and dumb prisoner was convicted of an offence. Upon the trial no attempt was made to communicate with the prisoner respecting the charge against him. The High Court quashed the conviction.

Proceedings of 5th Dec., 1870. 6. Mad. Rep. Rul. 7.

When a deaf and dumb person is placed on his trial, some means of communicating with him should, if possible, be adopted.

Proceedings of 24th May, 1870. Weir, 274.

Before reporting the circumstances of the case to the High Court, section 186 (Act X of 1872) requires the Court to proceed to the end of the enquiry or trial.

Proceedings of 22nd April, 1878. Weir, 275.

Section 186 prohibits a Court from passing sentence when it is uncertain that the accused has understood the proceedings against him.

Proceedings of 18th Nov., 1875. Weir, 276.

DISCHARGE.

Where there is no *primâ facie* case against an accused, and he has not been put on his defence, nor any charge preferred against him, he should be discharged, and not acquitted.

Reg. v. Bipro Doss, 8 S. W. R. Cr. R. 45.

The Court pointed out the necessity of a Court showing its jurisdiction and competency on the face of all its proceedings.

Where a complaint is preferred before a Magistrate, and the witnesses, named by the complainant are summoned and attend, but the complainant is absent, a Magistrate may, if he think it unnecessary to carry on the enquiry in the absence of the complainant, discharge the accused.

Reg. v. Dassoo Manjee, 11 S. W. R. Cr. R. 39.

A Deputy Magistrate was held to have acted irregularly in dismissing a complaint and directing the trial of the complainant under section 211 of the Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present.

Reg. v. Heraloll Ghose, 13 S. W. R. Cr. R. 37.

Where no charge in writing has been drawn up, and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved, can only discharge and not acquit the prisoner. Nor can the Magistrate acquit a prisoner whom he has no jurisdiction to try.

Reg. v. Robert Sheriff, 6 S. W. R. Cr. R. 13.

Reg. v. Sreenath Dey, 15 S. W. R. Cr. R. 61.

The discharge by a Deputy Magistrate of a person charged with an offence triable only by a Court of Sessions, is no bar to the Sessions Judge ordering the committal of such person to the Sessions under section 435, Act VIII of 1869.

Niamutulla v. Gopal Saha, 6 B. L. R. Ap. 6 S. C. 14 S. W. R. Cr. R. 63.

The accused was charged before a Deputy Magistrate with an offence under section 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainants witnesses, although present, and delayed the investigation unnecessarily for a long time. The Magistrate of the District then called for the proceedings, and having looked at them, considered that there was no case for the interference of the Criminal Courts, and discharged the prisoner, although he was present and under bail. Held, that the Magistrate was not only competent, but bound to discharge the prisoner, if his conclusion that no offence was made out was correct. But held also, that the Magistrate's conclusion was wrong, and that the Act complained of, if true, did amount to an offence under section 431 of the Penal Code, therefore the Magistrate's order was set aside, and further enquiry ordered.

Shoodun Mundle, 5 S. W. R. Cr. R. 58.

A discharge by the Magistrate under section 250 of the Code of Criminal Procedure (Act XXV of 1861) is not final like an acquittal under section 255, and the Sessions Judge under section 435 may order the accused to be put upon his trial notwithstanding his discharge by the Magistrate.

Taki Mahomed Mandal v. Krishna Nath Rai, 7 B. L. R. 7 ; S. C. 15 S. W. R. Cr. R. 53.

In answer to a reference from a Sessions Judge, the Court were of opinion that, in a case where the accused has been under a warrant, and is present to meet any charge, and the complainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under section 224, Code of Criminal Procedure (Act XXV of 1861) the accused person ought to be discharged, but also held, that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation.

Dinanath Gope v. Saroda Mookopadhia & others, 7 S W. R. Cr. R. 47.

A Magistrate ought not to discharge an accused without taking the evidence of the witnesses for the prosecution named in the petition of complaint.

Reg. v. Goburdhun Bera, 12 S. W. R. Cr. R. 65 ; S. C. 4 B. L. R. A. Cr. 1.

Held, that where a Magistrate released an accused person without drawing up a formal charge against him, or requiring him to plead or to make any defence to the charge under section 251 of the Criminal Procedure Code (Act XXV of 1861), there was no trial before the Magistrate, or acquittal under section 255, but

simply a discharge under section 250. The Sessions Judge is competent in such a case, under section 435, Act VIII of 1869 to direct the committal of the accused.

Santoo Mundle v. Abdool Biswas & others, 13 S. W. R. Cr. R. 35.

The High Court declined to interfere with an order of a Deputy Magistrate discharging an accused without trial, in a case under section 342 of the Penal Code because the complainant and his witnesses were not present.

Ramjoy Mozoomdar in re, 14 S. W. R. Cr. R. 65; S. C. 6 B. L. R. Ap. 67.

A Magistrate of a District has power under section 68 of the Code of Criminal Procedure (Act XXV of 1861) whether there be a private prosecutor or not, to order the arrest of a person who had been previously under trial by a Subordinate Magistrate, and who had been discharged under section 225 of that Code.

The powers given under sections 435 and 68 of the Code are distinct and independent powers,—the former providing for the revision of proceedings which have been already commenced, and the latter for the institution of proceedings *de novo*.

Ramdass v. Anund Chunder Roy, 19 S. W. R. Cr. R. 27.

A prisoner who had been sent up for trial, and who was discharged by the Deputy Magistrate, was subsequently re-arrested by a Sub-Inspector on the same charge and sent up for trial. The Deputy Magistrate considered the second arrest to be illegal, and prosecuted the Sub-Inspector for wrongful confinement and fined him. Held, that the Deputy Magistrate was right, the discharge from custody would have been a useless procedure, if the accused immediately became liable to be re-arrested without fresh material for prosecution of the charge.

Prosunno Coomar Ghose, petitioner, 19 S. W. R. Cr. R. 56.

The High Court has the power, under section 297 of Act X of 1872, not only to order the accused to be tried, but also to be committed for trial, if it appear to the High Court that the accused was improperly discharged; but from the absence of the words "order him to be tried" in section 296, it seems that a Magistrate is not empowered under that section to direct a Subordinate Court to take further evidence in a similar case.

Kistoram Mohara v. Anis & others, 20 S. W. R. Cr. R. 47.

In a case before the Joint-Magistrate in which the prosecution was closed, and the accused discharged under section 215 of the Code of Criminal Procedure (Act X of 1872), the Magistrate on a petition presented to him by the prosecutor, passed an order of remand directing the Joint-Magistrate to proceed with the case at the stage at which he left it. Held, that the discharge not being equivalent to an acquittal, the Magistrate might have received a complaint if he saw sufficient reason for doing so, and might have made it over to a subordinate officer to be heard, but he had no power to make the order of remand which he made.

Soondur Lukur v. Ramkumar Sirdar & another, 20 S. W. R. Cr. R. 67.

Under Explanation III, section 215 of the Code of Criminal Procedure (Act X of 1872) an order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken. Where a Magistrate considered that the evidence of a person who was not produced was material, it was held that he should have summoned such person as a witness under section 351 of the Code.

Reg. v. Japit Ahir alias Laljee, 22 S. W. R. Cr. R. 25.

Under section 315, Act X of 1872, an order of discharge cannot be passed unless the evidence of all the witnesses for the prosecution has been taken; and under section 220 of the same Act, no judgment of acquittal can be recorded unless a charge has been drawn up.

Meer Azeem Ali v. Hurnam Dass, 24 S. W. R. Cr. R. 9.

In a warrant case, in which, although, the complainant's witnesses and the accused were present, the Deupty Magistrate discharged the accused on the report of a police officer. Held, that his decision was illegal, as he was bound to take the evidence of the complainant before discharging the accused.

Reg. v. Thakoor Ram, 25 S. W. R. Cr. R. 35.

Where a Sessions Judge directed a Magistrate to make an enquiry into the matter of some complaints made by a Moonsiff against certain persons, and the Magistrate recorded the opinion that there was evidence enough to incriminate one of the accused, but dismissed the complaint against him, because the complaint made against him had not been explicit. Held, that the Magistrate was wrong to have discharged the accused, and ought to have drawn up a charge against him.

Mohesh Mistree & Prosunno Mistree in re, 25 S. W. R. Cr. R. 67.

Where a prisoner accused of causing hurt was, after the hearing of the prosecutor's witnesses discharged by the Cantonment Magistrate of Barrackpore, and the complainant, on an *ex parte* statement to the effect that all his witnesses had not been heard, procured an order from the District Magistrate, directing a re-hearing of the case, and transferring it for trial to the Joint-Magistrate. Held, that as the accused had been tried and discharged under section 215 of the Criminal Procedure Code (Act X of 1872) the case could only be revived by an order of the High Court: that there was a material error in the Magistrate's proceedings, and that his order reviving the case, and all subsequent proceedings, must be quashed. The High Court saw no reason to order a re-trial in this case.

Caspersz H. P. in re, 9 B. L. R. A. Cr. 337.

Where an accused person has been discharged by a Magistrate under section 250 of the Criminal Procedure Code (Act XXV of 1861), after enquiry into the case, the Court of Session cannot, under section 435, remand the case for further enquiry.

Jiat Sahu in re, 9 B. L. R. 339.

Where a Magistrate had discharged an accused under section 250 of the Criminal Procedure Code (Act XXV of 1861) and afterwards the Sessions Judge having remanded the case for further enquiry, re-tried it and convicted the accused, the High Court, while holding that the Sessions Judge had no power to make the order of remand, upheld the conviction.

Empress v. Hematullah, 3 I. L. R. Calc. 389.

A Magistrate is bound, before he discharges an accused person under section 215 of the Criminal Procedure (Act X of 1872) to examine all the witnesses and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution.

Poonachurn Pal in re, 7. I. L. R. Cal. 447.

The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate, is that laid down in section 168 of Act IV of 1877 (Presidency Magistrates Act) and as by that section, there is no appeal allowed to a complainant, who is a private individual, it is not open to him, by invoking the aid of the High Court under section 15 of the Charter, to obtain under the Court's extraordinary powers, that which he might obtain had he a right of appeal.

Troylokhyanath Mitter & another, in re, 1 C. L. R. 83.

In considering whether a person has been improperly discharged by a Magistrate, the High Court, under section 297, Code of Criminal Procedure (Act X of 1872) is not restricted only to an error in law, but can order a trial where *primâ facie*, the evidence establishes a case against the accused to which he should be required to enter on his defence. The Sessions Judge was, however, not competent himself to order the trial or inquiry to proceed, but as the order was otherwise a proper order, the High Court in setting it aside revived it as its own order.

Empress v. Kashi, 2 I. L. R. All. 447.

Before a Magistrate discharges an accused person under section 215 of Act X of 1872, he is bound, under that section, to examine all the witnesses named for the prosecution. Empress *v.* Himatulla (I. L. R. 3 Calc. 389) followed.

Reg. v. Hurpershad, 4 N. W. P. Rep. All. 23.

A discharge under section 250 of the Criminal Procedure Code (Act XXV of 1861) does not amount to an acquittal.

Newar in re, 7 N. W. P. Rep. All. 230.

In cases triable under the provisions of Chapter XVII of Act X of 1872, the Magistrate should not discharge the accused person until after trial as prescribed in that Chapter.

Reg. v. Parasurama Naikar, 4 I. L. R. Mad. 329.

Section 362 of the Code of Criminal Procedure (Act X of 1872) does not give a Magistrate discretion to dispense with the examination of witnesses summoned by the prosecution. An order of discharge under section 215 of the Code of Criminal Procedure before all the witnesses for the prosecution have been examined is illegal.

Imperatrix v. Gowdapa Bin Venkugowda, 2 I. L. R. Bom. 534.

When an accused person has been discharged by a Subordinate Magistrate under section 215 of the Code of Criminal Procedure, and the Magistrate of the district, after calling for the proceedings, considers that the order of discharge was improper, the proper course for the Magistrate of the district to adopt is to refer the proceedings for the orders of the High Court, and not to order a new trial by another Subordinate Magistrate.

Proceedings of 22nd Feb. 1875. 8 Mad. Rep. Rul. 5.

Of five witnesses cited for the prosecution, only three were examined by the 2nd class Magistrate who, thereupon discharged the prisoners on their trial for criminal breach of trust. Held, that such discharge without hearing all the witnesses was irregular, but the High Court was not disposed to interfere on that ground alone.

Reg. v. Pandurang Mayral & Ramkrishna Hari, 5 Bom. Rep. Crown Cases, 41.

Where under section 171 of the Criminal Procedure Code (Act XXV of 1861) a case is sent up for investigation by a Magistrate, it is competent for such Magistrate to discharge the accused, under section 225 if, in his opinion, the evidence against the accused is not sufficient to warrant their committal to the Session Court.

Parasurama Naicker, accused. Weir, 295.

A Magistrate proceeding under Chapter XVII (warrant cases) of the Code (Act X of 1872) must examine all the witnesses named by the prosecution and summoned by the Magistrate.

When proceeding under Chapter XV (preliminary enquiry in committable cases) he should ordinarily examine all such witnesses. Section 362, clause 2 prescribes the course which may be taken by a Magistrate before, and not after the issue of summons; and is therefore inapplicable, when a Magistrate proceeding under Chapter XVII has actually summoned witnesses.

Munisami & others. Weir, 296.

A Magistrate who finds he has not jurisdiction to try a case, cannot discharge the accused under section 215, but should proceed under section 45, Criminal Procedure Code (Act X of 1872).

Proceedings of 29th Oct., 1880. Weir, 297.

Where an accused person has been improperly discharged under section 215, a warrant for his re-arrest cannot be issued, until the High Court has set aside the order of discharge.

Jeebunkisto Roy v. Shib Chunder Das, 10 I. L. R. Calc. 1027.

An accused having been discharged after a full enquiry before a competent Court, is entitled to the benefit of such discharge, unless some further evidence is disclosed. Consequently an order made by a District Judge directing a further enquiry to be held under section 437 of the Criminal Procedure Code (Act X of 1882), in a case where a Magistrate had discharged the accused under section 253, was not war-

ranted by law, when there had been a full enquiry by a competent Court, and when no further evidence was disclosed, such order being based merely upon the ground that, in the opinion of the District Judge, the evidence recorded was sufficient for the conviction of the accused.

DISMISSAL.

Reg. v. Bholanath Banerjee, 7 S. W. R. Cr. R. 31.

Where an accused, for having repaired a public road without having previously asked for leave to repair it, was, on a simple petition, charged with having obstructed the road, and the complainant never appeared, Held, that the Deputy Magistrate ought to have dismissed the complaint.

Reg. v. Chundrai Sikdar. 3 S. W. R. Cr. R. 36.

The Deputy Magistrate did not act illegally in dismissing a case when the complainant did not appear on the day fixed.

Reg. v. Harrakchand Nowlaka, 8 S. W. R. Cr. R. 12.

A Magistrate cannot dismiss a complaint without first examining the complainant. An enquiry by the police into complaints falling under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) is not warranted by law.

Reg. v. Abdul Biswas, 7 B. L. R. 8 note.

In this case the complainants preferred a charge against the accused under sections 143 and 342 of the Indian Penal Code, for wrongfully and unlawfully confining them. The case was referred on the 13th December by the Magistrate of Jessore to the Deputy Magistrate of that place, who on that day ordered that recognizances should be taken from the parties, and fixed 23rd December for the trial of the case. The complainants being absent on the 23rd December, the Deputy Magistrate struck off the case, and discharged the defendants. Subsequently the complainants applied to the Magistrate, praying that their evidence might be heard, and the case tried, whereupon the Magistrate called for an explanation from the Deputy Magistrate, and referred the case to the High Court, stating that the order was an erroneous order, for, the case being triable under Chapter XIV, the Deputy Magistrate should have forfeited complainant's recognizances, but should not have dismissed the case.

On the above grounds, he recommended that the Deputy Magistrate should be directed to re-hear the cause. The Deputy Magistrate, in submitting an explanation to the Magistrate, stated that the defendants were charged with offences under sections 143 and 342, Indian Penal Code. Though the offence under section 342 is punishable with imprisonment exceeding six months, the offence under section 143 is punishable with imprisonment not exceeding six months, and for which a summons may ordinarily be issued; and that upon the day appointed for the appearance

of the accused person, the complainant did not appear, and the witnesses also not being present, the case was struck off.

HOBHOUSE, J. (after stating the facts briefly) :—It is said that the Deputy Magistrate should rather have estreated the complainant's recognizances. We suppose it is meant to be said that he should, by this way or by some other, have compelled the complainant and his witnesses to come into Court, and should then have proceeded with and concluded the trial. But if a complainant and his witnesses do not attend on the day fixed for the trial, the order of the Magistrate, discharging the accused, even if it be not warranted by the Procedure Code, is certainly not an order with which we should think it right to interfere under the extraordinary power of revision given to us. We think the order may stand.

LOCH, J. :—The reference appears to me to be unnecessary. There has been no trial. The accused was simply discharged because the complainant and his witnesses were not in attendance on the day fixed for the trial, and the order made by the Deputy Magistrate does not appear to be illegal. He might, it is true, have estreated the recognizances of the complainant and his witnesses. The record may be returned.

Reg. v. Hiralal Singh, 5 B. L. R. Ap. 48; S. C. 14 S. W. R. Cr. R. 8.

When a charge is dismissed by a Subordinate Magistrate without enquiry, a Magistrate has no power, under section 435 of Act VIII of 1869 to order a trial before another Magistrate, but can only order a commitment to the Court of Session.

Reg. v. Kalicharan Misser, 7 B. L. R. Ap. 55.

A Magistrate ought to hear evidence in support of a charge before dismissing the complaint. A bare assertion by an accused, charged with committing theft, of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft.

Reg. v. Khettronath Ghose & others, 11 S. W. R. Cr. R. 56.

A Magistrate was held to have acted rightly in dismissing a complaint under section 17 of Act IX of 1868 (Certificate Act) because there was no evidence that the names of the accused were included in the list mentioned in section 17. In prosecutions under this Act, a Magistrate must proceed in the manner laid down in Chapter XV of the Code of Criminal Procedure, and must require proof of all the facts which go to constitute the offence.

Reg. v. Ramnarain Ghose, 8 S. W. R. Cr. R. 5.

The Deputy Magistrate adjourned the case to the 21st on which day he ordered the case to be dismissed for non-attendance of the complainant; but on the following day cancelled that order, and revived the case on the ground on his having dismissed it by mistake in ignorance of the complainant having petitioned for an adjournment by reason of sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate as the order of the Deputy Magistrate was manifestly wrong, the High Court set aside the whole of the proceedings and restored the case to the position in which it stood before the 21st.

Reg. v. Bhagabati Suthran & others, 7 B. L. R. 9 note.

GLOVER, J. :—The Deputy Magistrate's order of the 13th of May dismissing the complaint, under section 259 of the Criminal Procedure Code is clearly illegal. The charge made was one of criminal misappropriation in which the Deputy Magistrate exercised the discretion allowed him by section 248 of the Code, and issued a summons, in the first instance, against the persons complained against, instead of a warrant. But the mere fact of a summons having been issued, did not bring the case within the purview of Chapter XV of the Code, or allow the Deputy Magistrate to dismiss the complaint under section 259, because the complainants do not appear on the day appointed. The case remained subject to the rules laid down in Chapter XIV of the Code, and there is no provision in that Chapter for the dismissal of complaints on account of non-attendance of complainants. The Deputy Magistrate's order is therefore quashed, and the charge will be proceeded with in the usual course.

Reg. v. Bidoo Ghose, 7 B. L. R. 9 note, 12 S. W. R. Cr. R. 27.

The facts of this case were as follows :—One Dhan Chang, on the 18th March, complained at the Chattak police station, that Bidu Ghose, Sheikh Adil, and others, had wrongfully confined his relative Lochan Chang for the purpose of extorting money.

The police entered the case under section 342, and though they reported it true, sent it up in B. form, as they said it was not proved.

On April 1st, the acting Magistrate, Mr. Peterson, ordered the papers to be filed, but on April 2nd, Lochan Chang himself presented a petition, stating that he had been confined in various places to make him pay his rent, and having been released by the police, now brought a charge under sections 342 and 347. The police reports were examined, and on April 6th, the deposition on oath of Lochan was taken, and summonses on five men, named Bidu, Mathan, Naru, Adil, and Bipari, were issued, and April 16th was fixed for the trial. On that day all the parties being present, the case was made over to the Deputy Magistrate, who, on the 17th and 19th, took the evidence of the prosecutor and his witnesses; and on the 19th holding the accused to bail, postponed the case till May 13th for the evidence of two persons whose evidence was considered necessary by the Court.

On May 13th he dismissed the case, and discharged the accused, because the complainant was not present. On that same day (May 13th) the complainant, Lochan Chang applied to the Joint-Magistrate (who was in charge of the current duties of the Judge's office) stating that he had been present all day, in the Deputy Magistrate's office, and that not his name, but that of Dhan Chang (the original informant at the police station) had been called out, and because he had not answered it, the case had been dismissed.

The Sessions Judge of Sylhet, who referred the case, considered there were three illegalities at least in the Deputy Magistrate's proceedings :—

(1) He had no power to dismiss, in default of prosecution, a charge laid under section 347.

(2) Having taken the evidence of a prosecutor, and postponed the case for the evidence of other parties to a future date, he had no power to dis-

miss any case in default of prosecution, the prosecutor having given his evidence in the presence of the accused, and having produced his witnesses, the case should then have been decided on its merits.

(3) The prosecutor's name entered on the fly-leaf of the case was Dhan Chang, the actual prosecutor was Lochan Chang, and Lochan's name ought to have been cried not Dhan's. In the matter of calling the names, the Judge stated that he fully believed Lochan's story, as it is corroborated by his subsequent behaviour and by the record. Under these circumstances he referred the case to the High Court, under section 434 in order that the Deputy Magistrate'e order of dismissal might be quashed.

The irregular proceedings of the Deputy Magistrate, in delaying the examination of the witnesses from April 16th to 19th were also noticed.

The judgment of the High Court was delivered by JACKSON, J. :—" We agree with the Magistrate and the Sessions Judge. We quash the order of the Deputy Magistrate, dismissing the complaint for default, and direct that he proceed therewith according to law.

Dulali Bewa v. Bhuban Shaha, 3 B. L. R. A. Cr. 53.

A. charged B. before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the police, and reported to be false. The Magistrate, without recording the complaint under section 66 of the Code of Criminal Procedure, (Act XXV of 1861) sent for the police papers, and under section 180 of the same Code dismissed the case. Held, that the proceedings were illegal, that the Magistrate was bound, under section 66 of the Code of Criminal Procedure, to record the examination of the complainant before he could, under section 180 dismiss the complaint.

Degumber Paul v. Kally Doss Dutt, 8 S. W. R. Cr. R. 82.

A Magistrate is not authorized to dismiss a case because he finds, in course of investigation, that the facts disclose an offence other than, or in addition to, that complained of; but is bound to adjudicate on the original charge.

Nundlall Sootrodhor v. Bhagirutty Sootran & others, 10 S. W. R. Cr. R. 31.

In a case falling under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) a Deputy Magistrate has no power to dismiss a complaint on account of the non-attendance of complainant, even if a summons, instead of a warrant is issued in the first instance requiring the attendance of the complainant.

Fokto Shah, Case of, 10 S. W. R. Cr. R. 49.

Held by LOCK, J.—that a Magistrate has no authority to order a police enquiry in a case under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861). Held, by GLOVER, J.—(dissenting) that a Magistrate may order a police enquiry into any offence punishable under the Penal Code. Held by both Judges, that the High Court cannot interfere under section 434 of the Code of Criminal Procedure in a case in which a Magistrate dismisses a complaint under section 67 of that Code.

Batool Nushyo v. Bhugloo Chowkeedar & others, 10 S. W. R. Cr. R. 50.

A Sessions Judge, in referring a case under section 434 of the Code of Criminal Procedure (Act XXV of 1861) should state reasons of his own for the reference, and not merely send up the reasons which may have been left by his predecessor. A Magistrate has a discretion under section 67 of the Criminal Procedure Code, to dismiss a complaint at once, and is under no obligation to go further.

Beelash v. Makroo, 10 S. W. R. Cr. R. 61; S. C. 2 B. L. R. S. N. 15.

A Magistrate may dismiss a complaint, under the provisions of section 67 of the Code of Criminal Procedure (Act XXV of 1861) before issuing a summons for the attendance of the accused; but when all the parties are in attendance, he is bound to follow the procedure laid down in sections 265 and 266, and cannot dismiss the complaint without hearing the evidence.

Isserchunder Ghose v. Peari Mohun Palit, 16 S. W. R. Cr. R. 39.

Per GLOVER, J.:—Where the Criminal Procedure Code (Act XXV of 1861) makes it necessary for a Magistrate before dismissing a charge to examine both the complainant and his witnesses, it supposes that there has been already a *primâ facie* case made out; and where the complainant makes out such a *primâ facie* case, the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge; but in a case where there is clearly no *primâ facie* case established, the Magistrate is justified in acting under section 67 of the Code of Criminal Procedure and in dismissing the case at once.

Kishore Sahai v. Mungeri Sahai, 16 S. W. R. Cr. R. 48.

Section 193 of the Code of Criminal Procedure (Act XXV of 1861) applies also to cases under Chapter XV of that Code, and a Magistrate cannot dispose of a case under that Chapter without examining the witnesses called for the prosecution.

Mahomed Alum v. Sheikh Akil & others, 16 S. W. R. Cr. R. 58.

The Deputy Magistrate's order dismissing a case for default (after repeated unnecessary adjournments and after the accused was put on his defence) upon a day to which no legal adjournment was made, was set aside as illegal.

1. Mahomed Jan v. Khadi Sheikh.
2. Hurnath De Khashkhil v. Joygopal De Sarkar.
3. Hurischandra Das v. Bolai Audhicaree.
4. Sheik Ahmuddy v. Anund Mohun

The High Court declined to interfere in four cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge—*the first* because the Judge considered that mere persistence in demand of rent did not amount to trespass justifying the right of private defence as held by the Magistrate—*the second*, because the Judge considered that the Magistrate's reasons, *viz.*, (1) want of explanation of the cause of complainant's presence on the spot where the alleged assault was committed, (2) want of explanation of delay in making complaint, and (3) want of material evidence in the shape of bruises, were not sufficient in law to justify a summary dismissal—*the third* be-

Mozoomdar, 16 S. W. R. Cr. R. 65.

cause the Judge considered that the mere assertion of a claim to land by the accused did not justify the dismissal of the criminal charge as to theft of its produce, and that the Deputy Magistrate should be directed to hold a proper enquiry and dispose of the case after recording evidence; and the *fourth*, because the Judge considered that delay in making complaint was not of itself a legal ground for dismissal, particularly where an explanation of the delay is tendered.

Bullee Singh v. Kanai Chowdhree & others, 17 S. W. R. Cr. R. 2.

After complainant's preliminary examination, the case was referred to the police for report, and complainant had notice to appear on 6th November to hear the report. On 31st October, the Assistant Magistrate dismissed the case upon the report of the police officer without giving complainant, an opportunity to show cause against the dismissal. His order was set aside by the High Court, and he directed to conform to Circular 5A. dated September 1868.

Shibu Manjee v. Noshee Mookerjee, 17 S. W. R. Cr. R. 3.

In this case the Court declined to say that as a matter of law, the Magistrate acted illegally in calling upon complainant to produce proof *ex parte*, to justify the issue of process, and upon default of such proof in dismissing the charge.

Ramchurn Dey v. Sheikh Jannu, 17 S. W. R. Cr. R. 6.

Where a Magistrate dismissed a complaint in default, under section 259, Code of Criminal Procedure (Act XXV of 1861), and fined the complainant under section 270, the fine was remitted and ordered to be refunded.

Bhim Pariru & others v. Bighnessur Putnaik, 17 S. W. R. Cr. R. 7.

The Deputy Magistrate censured for his precipitancy in dismissing a complaint of a deliberate attempt at extortion, supported as it was by evidence on the record. The prisoners having been acquitted, the Court passed no further order regarding the case.

Boodhoo Roy v. Ramdyal Singh & others, 18 S. W. R. Cr. R. 55.

In a case in which the servant of an Indigo Planter preferred a charge against certain parties for cutting and carrying away indigo crop which was in his charge, the Joint-Magistrate dismissed the charge on the ground that a more responsible servant ought to have laid the complaint. Held, that the Joint-Magistrate ought to have tried the case.

Bagram J. G., petitioner, 19 S. W. R. Cr. R. 52.

Where the Magistrate dismissed a case in the exercise of a judicial discretion, such dismissal, by section 212, Act X of 1872, has the effect of an acquittal of the accused person. The Court has no jurisdiction to interfere with the acquittal of an accused person, except the application be made either by Government, or under the sanction of Government.

Sheikh Kooreem Bux v. Sheikh Hoormut & others, 20 S. W. R. Cr. R. 60.

Where a Joint-Magistrate dismissed a case in which the complainant charged the accused with illegal assembly, criminal trespass, and mischief, on the ground that the case was one completely for the Civil Court, the High Court, set aside the order, and directed the Joint-Magistrate to try it.

Eastern Bengal Railway Co. v. Kalidass Dutt & another, 23 S. W. R. Cr. R. 63.

The omission to comply with prescribed formalities before issuing the summons, will not vitiate the proceedings after summons so as to enable a complainant to re-open the case.

The dismissal of a complaint under section 205 operates as an acquittal by reason of section 212 Code of Criminal Procedure (Act X of 1872).

Dukun Pahan & others, petitioners, 24 S. W. R. Cr. R. 32.

Certain parties having complained, in the Magistrate's Court of assault or ill-usage by order of one whom they called their zemindar, with a view to making them pay enhanced rent, both complainants and accused were absent when the case was called on for hearing. As the Magistrate was about to dismiss the complaint, a third party appeared, and alleged that the complaint had been made with the connivance of the accused, for the purpose of fabricating evidence of his right or title to the mouzah where the complainants lived. Thereupon the Magistrate compelled the complainants to appear, took down the evidence of some of them, received a counter-complaint from the third party above-mentioned, and convicted the complainants under the Indian Penal Code, section 193, and sentenced them to imprisonment. Held, that the Magistrate ought not to have entertained the third party's petition, or compelled the complainants to go on with their case; and that, under the circumstances, the evidence given was not judicial evidence.

Sreemutty Tazoonnissa v. Wassil, 24 S. W. R. Cr. R. 64.

A woman accused a man of seduction under promise of marriage, and asked for maintenance for their illegitimate child. The Deputy Magistrate summoned the man; but on the day appointed for hearing, neither the man nor the woman appeared, and the complaint was dismissed. Subsequently the woman petitioned, representing her inability to attend on the day appointed, owing to causes beyond her control. The Deputy Magistrate, without inquiring into the allegation, held that his dismissal of the complaint operated like an acquittal. Held, that the Deputy Magistrate, though competent to dismiss the complaint, ought to have exercised some discretion, more particularly under the circumstances detailed by prosecutrix, and that the section (Act X of 1872 section 205) contemplated such an exercise of discretion.

Nityanund Bur v. Kalachand Bur & others, 24 S. W. R. Cr. R. 75.

The further proceedings allowed by the Code of Criminal Procedure (Act X of 1872) section 147, can only be taken in cases where the complainant has been alone heard, and not where he has had the advantage of having his witnesses heard. In the latter case a dismissal would amount to a verdict of acquittal against the accused parties, and render a second trial on the facts impossible.

Syed Nissar Hossein v. Ramgolam Singh, 25 S. W. R. Cr. R. 10.

Where a charge, made against a peshkar and the police, was dismissed upon the statements of persons examined by the police, and without complainant's witnesses being examined, the order of dismissal was held to be illegal. It was also held to be illegal for the Magistrate to sanction a prosecution under the Indian Penal Code, section 211, against the complainant without giving him an opportunity to prove his charge.

Irfan Biswas v. Jinnut Bibee, 25 S. W. R. Cr. R. 63.

The dismissal of a case in which a summons issues in the first instance amounts to an acquittal of the accused, against whom, after such an acquittal, no further proceedings in respect of the same Act can be taken under a different charge.

Raghoo Parirah in re, 10 B. L. R. App. 26.

Reference by the Sessions Judge of Cuttack. PHEAR, J.:—It appears that the Magistrate removed a case from the file of the Joint-Magistrate to his own, after complaint had been made and warrants issued by the Joint-Magistrate upon the footing of the complaint. The Magistrate having removed the case, immediately suspended the warrants and dismissed the complaint, on the ground that he had previously in his executive capacity, made some enquiry into the matter out of which the complaint arose, and from information that he so gained, was of opinion that the complaint ought to be rejected under section 67 of the Criminal Procedure Code. The words of this section are, so far as it is necessary to read it now—"If in the judgment of the Magistrate there be no sufficient ground for proceeding, he shall dismiss the complaint." We think that the Magistrate committed an error in taking this course. It has always been held by this Court that the proper officer to issue the warrant is the officer who has heard the complaint made, because it is he who can best exercise a discretion with regard to the *primâ facie* merits of the complaint. When that officer has issued the warrants, the case ought to go on in due course according to the procedure prescribed by the Code, unless something occurs to show that the Magistrate who had issued the warrant had from some cause or another made a wrong exercise of his discretion, which has certainly not been the case here. It appears to me that when the Magistrate took the case from the Joint-Magistrate's file, he ought to have proceeded with it as from the stage at which he found it; and I think he committed a material error by not doing so. In my opinion therefore the order of the Magistrate which suspended the warrants and dismissed the complaint should be set aside.

Dijahur Dutt & others in re, 4 I. L. R. Calc. 647.

A Magistrate has no power to remand a criminal case to a subordinate Magistrate for re-trial after the case has once been dismissed; the course open to him are (1) to accept a fresh complaint supported by fresh evidence which was not before the Court when the case was dismissed; or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court under section 296 of Act X of 1872 (the Criminal Procedure Code).

Empress v. Thompson, 6 I. L. R. Calc. 523; S.C.8 C.L.R.106.

An order for dismissal under section 124 of Act IV of 1877 (Presidency Magistrate's Act) does not operate as an acquittal.

Empress v. Dinonath Roy, 8 I. L. R. Calc. 166; S. C. 10 C. L. R. 190.

All prosecutors whose charges are dismissed by the Presidency Magistrate, are affected by the order of discharge, and are, therefore, entitled under section 170 of the Presidency Magistrate's Act to obtain copies of the order made by, and of the depositions taken before, the Magistrate.

Biyoji Bhagut, Appellant in re, 4 C. L. R. 134.

A charge of burglary and theft having been preferred against two persons, the Magistrate, before whom the charge was laid, after comparing the petition of complaint with the papers submitted to him by the police, who had made an enquiry and reported the charge to be false, directed, without having taken the examination of the complainant, that the case should be struck out, and that proceedings should be instituted against the complaint under section 182 of the Indian Penal Code. Proceedings were accordingly taken, and the complainant was ultimately tried and found guilty of an offence under section 211.

Held, on appeal, that the proceedings had been irregular, and should be quashed; that the Magistrate should be directed to re-open the enquiry into the charge of burglary and theft, first examining the complainant; and that, if after such examination, he should be of opinion that the charge was false, the appellant might be proceeded against under section 211 of the Penal Code.

Sheikh Erad Ali v. Nusibunnissa Bibi, 4 C. L. R. 534.

A charge of theft was preferred by the petitioner on the 7th October 1878 before the police, who thereupon instituted enquiries, which subsequently resulted in their finding the charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the District, who directed the complainant and his witnesses to attend on a particular day, but subsequently, without having examined them or the complainant, referred the matter to the Sub-Deputy Magistrate. That officer having reported the charge to be false, the Magistrate, on the 9th November, wrote upon the police report, which had meanwhile, on the 9th October, been submitted to him, the following direction, *viz.*, "shew as false." On the 19th November a counter-prosecution under sections 211, 182, and 500 of the Penal Code was sanctioned, and eventually on the 22nd May 1879 resulted in the petitioner being convicted. While the counter-prosecution was pending, the petitioner on the 22nd April applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the following day the Magistrate recorded the following order: "Dismissed in accordance with my decision in the police report under section 147 of the Criminal Procedure Code" (Act X of 1872).

Held, that the complaint had been improperly dismissed, and that the order of the Magistrate, dated 23rd April 1879, must be set aside.

Moolchund in re, 3 N. W. P. Rep. All. 261.

The words "dismissed without inquiry" in section 435 of the Code of Criminal Procedure (Act XXV of 1861) refer to a complaint which a Magistrate, under section 67 of that Code, has dismissed without making the inquiry he is empowered to make under section 180.

Reg. v. Jugroop Ugrabee & others, 3 N. W. P. Rep. All. 341.

Cases instituted and tried under Chapter XIV of the Criminal Procedure Code, cannot be struck off the file at the request of the complainant, or for want of prosecution on his part. The Magistrate must proceed in such cases in the manner prescribed by that Chapter, notwithstanding the complainant may desire to withdraw his complaint.

Korapulu v. Monappa & others, 5 I. L. R. Mad. 160.

Where a complainant is required to pay fees for summoning witnesses under section 361 of the Code of Criminal Procedure (Act X of 1872) and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint under section 205 of that Code.

Reg. v. Devama & Somshekhar, 1 I. L. R. Bom. 64.

A warrant case of a nature not compoundable under section 214 of the Indian Penal Code was "dismissed" on the parties coming to an amicable settlement. Held, that the "dismissal" was equivalent to a discharge under section 215 of the Code of Criminal Procedure (Act X of 1872), and the composition did not affect the revival of the prosecution, if that should otherwise be thought necessary or expedient.

Govt. of Bombay v. Shidapa, 5 I. L. R. Bom. 405.

A person made a complaint to the police that the accused had enticed away his wife (a non-cognizable offence) and committed theft (a cognizable offence). The police enquired into the latter offence only; and, finding no *primâ facie* case made out, reported to that effect to a Magistrate, who directed that that offence be expunged from the list of reported offences. Held, that, under the circumstances there had been no dismissal of the complaint in respect of the former offence; and that there was no bar to the complaint into that offence being taken and proceeded with.

Rangasawmi Gounden v. Sabapathy Gounden & others, 4 Mad. Rep. 162.

A Magistrate is bound at least to examine a complainant before he can exercise the discretionary power to issue process or dismiss the complaint which is given to him by section 67 of the Code of Criminal Procedure (Act XXV of 1861).

Proceedings of 1st April 1868, 4 Mad. Rep. Rul. 8.

Dismissal of a complaint under section 269 of the Criminal Procedure Code (Act XXV of 1861) in consequence of non-attendance of the complainant, the order of dismissal having been passed before the trial commenced, amounts to a discharge without trial, and does not bar the complaint from being again preferred.

A Subordinate Magistrate has no power to dismiss a charge of criminal misappropriation under section 403 of the Penal Code for non-appearance of the complainant under section 259 of the Code of Criminal Procedure (Act XXV of 1861). That section only applies to cases which fall within Chapter XV of the Criminal Procedure Code.

Proceedings of 24th March 1869, 4 Mad. Rep. Rul. 41.

Where the Sub-Magistrate dismissed a charge of theft without enquiry, held that the District Magistrate might institute a fresh enquiry into the complaint.

Proceedings of 17th June 1870, 5 Mad. Rep. Rul. 31.

Sanction was given by the Magistrate, for the institution of criminal proceedings against the defendant, for having made a false charge against the complainant. The Magistrate dismissed the complaint, on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. Held, that the Magistrate had power to dismiss the complaint.

Proceedings of 9th Jan. 1871, 6 Mad. Rep. Rul. 15.

Section 270 of the Code of Criminal Procedure, applies only when a complaint of an offence, triable under Chapter XV of the Code (Act XXV of 1861) is dismissed.

Proceedings of 21st Dec. 1871, 6 Mad. Rep. Rul. 49.

A Court of Session has power to direct a Magistrate to enquire into a complaint dismissed by him under section 67 of the old Code of Criminal Procedure (Act XXV of 1861) or the corresponding section 147 of the present Code (Act X of 1872). A District Magistrate is not bound to forward to the High Court the objections of his Assistant to an order of the Session Court.

Proceedings of 19th March 1873, 7 Mad. Rep. Rul. 16.

A complaint was dismissed because the complainant did not appear on the day to which the hearing had been adjourned. The order of adjournment was not made in the presence and hearing of the parties. Held, that the order of dismissal was illegal.

Proceedings of 24th Feb., 1875. 8 Mad. Rep. Rul. 6.

A Magistrate having before him a police report submitted under the provisions of section 117 of the Code (X of 1872), may determine as he thinks expedient, either to take no further steps, or to entertain the complaint under section 141 or 147 of the Code of Criminal Procedure.

Proceedings of 5th Feb., 1878. Weir, 256.

A complaint made in the form of a police report, may be dismissed without examining witnesses, if the facts stated in the report constitute no offence.

Proceedings of 24th July, 1875. Weir, 268.

Proceedings of 28th March, 1878. Weir, 269.

When a complaint has been dismissed by a Magistrate under section 147, (Act X of 1872), no other Magistrate can again entertain the same complaint without an order from some one of the authorities mentioned in section 298.

Narayanasami Aiyan v. Janaki Ammal. Weir, 282.

A District Magistrate has no power to order the re-entertainment of a complaint dismissed for non-appearance of the complainant by a Subordinate Magistrate.

Proceedings of 5th Nov., 1874. Weir, 283.

When a complainant failed to appear on a date to which a trial had been adjourned to secure attendance of defence witnesses, and the Magistrate dismissed the complaint: it was held, that the discretion vested in the Magistrate by the section had been misapplied.

Proceedings of 3rd June, 1881. Weir, 289.

Dismissal in section 209, (Act X of 1872) includes acquittal, and has not necessarily the narrow meaning of discharge. A Magistrate who discharges a case finding the accused not guilty, must record a judgment of acquittal under section 211, and if he further finds the charge frivolous or vexatious, he may, in dismissing it and acquitting the accused, award compensation.

Proceedings of 17th August, 1875. Weir, 291.

A dismissal of a complaint when the proceedings have been substantially so irregular as to amount to no trial, will not operate by virtue of section 212, (Act X of 1872). as an acquittal.

Criminal Revision Case, No. 146 of 1882. Weir, 361.

When a complainant fails to pay the fees for summoning witnesses, it is not competent to a Magistrate to dismiss the complaint for default of appearance on the part of the complainant (section 205, Criminal Procedure Code). The Magistrate must proceed to deal with the case on the evidence he may have before him.

Govinda Dass v. Dulall Dass & others, 10 I. L. R. Calc. 67 S. C., 13 C. L. R. 408.

A Magistrate is not competent to pass an order of dismissal or discharge, in consequence of the absence of the complainant, in warrant cases not coming within section 259 of the Code of Criminal Procedure (Act X of 1882), except in cases coming within the last clause of section 253 of the same Code.

Romanath Bal & Behari Bag Bagdi in re, 13 C. L. R. 303.

A case having been transferred from the file of one Magistrate to that of another, was on the day fixed, called on for hearing, but the complainant not appearing, the case was dismissed under section 247 of the Criminal Procedure Code (Act X of 1882). It appeared that the complainant and his witnesses though not in attendance in the Magistrate's Court, were present in another Court in the same Court-house being under the

impression that his case had been transferred to the Magistrate of that Court. Held, that the complainant having been present in the Court-house, the provisions of section 247 of the Code had been improperly applied.

DISPUTES REGARDING IMMOVEABLE PROPERTY.

Reg. v. Bullub Kant Bhuttacharjee & others, 11 S. W. R. Cr. R. 36; S. C. 7 B. L. R. 324 note.

In a case under section 318 of the Code of Criminal Procedure (Act XXV of 1861) a Magistrate need not summon witnesses, but may proceed on investigations conducted by the District Police, if he considers that they show that a breach of the peace is likely to occur.

In proceedings under Chapter XX of the Code of Criminal Procedure, a Magistrate should not hold a lengthened and protracted investigation, but should make a speedy and summary enquiry into the fact of possession, and pass with as little delay as possible, an order declaring the party whom he finds in possession entitled to retain it, until ousted by due course of law.

Reg. v. Hemendranath Tagore, 9 S. W. R. Cr. R. 20.

There are no "general powers" in any law which authorize a Magistrate to issue orders, directing that a party shall be kept in peaceable possession of land. Such orders were, therefore, cancelled as without warrant of law, the procedure prescribed in section 318 of the Code of Criminal Procedure (Act XXV of 1861) not having been observed.

Reg. v. Juggobundhoo Sircar & another, 3 S. W. R. Cr. R. 53.

A Magistrate may direct a Deputy Magistrate, vested with the full powers of a Magistrate, to pass proper orders in a case of disputed possession of land decided by him under section 318, Code of Criminal Procedure (Act XXV of 1861), but he cannot withdraw the case from the file of the Deputy Magistrate, and, instituting a fresh one, dispose of it himself.

Reg. v. Madho Churn, 13 S. W. R. Cr. R. 51.

Where two parties have a dispute before a Magistrate, as to the right to the use of water which the party complained against had embanked, the Magistrate should proceed under Chapter XXII and not as for a nuisance under Chapter XX of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Mussamut Imam Bandee, 7 S. W. R. Cr. R. 26.

Under section 318 of the Code of Criminal Procedure (Act XXV of 1861) a Magistrate can only try the question of possession, without reference to the right of possession.

Reg. v. Omirto Nath Jha & others, 1 Ind. Jur. N. S. 399; S. C. 6 S. W. R. Cr. R. 61.

Under Act XXV of 1861, section 318, the Magistrate, if satisfied that a dispute concerning land is likely to result in a breach of the peace, shall record a "proceeding" stating the grounds of his being so satisfied. This proceeding should show on the face of it, that there are reasonable grounds for apprehending a breach of

the peace. Under this section, the question of title is excluded, and the Magistrate is equally prohibited from grounding a *primâ facie* case of possession on the title shown in evidence by either party. He should confine himself to ascertain what was the subject of the dispute, and the question of the possession.

Reg. v. Saadut Khan, 3 S. W. R. Cr. R. 19.

A Magistrate is quite justified in preventing a person from entering upon land in the possession of another.

Reg. v. Sager Mahomed, 1 S. W. R. Cr. R. 25.

A Deputy Magistrate's order awarding absolute possession of the land to the plaintiff was quashed because the Deputy Magistrate was bound, under section 318 of the Code of Criminal Procedure (Act XXV of 1861) to enquire into the fact of possession and decide accordingly, and according to his own statement, the possession was found in the defendant; and because the plaintiff only claimed a right of way over the land, and not the possession of it.

Reg. v. Sachee alias Sochee Boler, 7 S. W. R. Cr. R. 112.

Where A. is in actual peaceable possession of land, B.'s attempt to recover possession of it by force is an illegal act which A. has a right to resist. If B. uses force in carrying out his attempt, A. has a right to oppose force to force, and to inflict upon B. such injury as is necessary to compel him to desist.

Reg. v. Seetanath Roy, 3 S. W. R. Cr. R. 9.

Before passing an order in a case of disputed possession of land, &c., the procedure enjoined by section 319 of the Code of Criminal Procedure (Act XXV of 1861) should be carried out.

Reg. v. Toyluckonath Sircar, 2 S. W. R. Cr. R. 64.

In a case of dispute concerning a right of way, the Magistrate, instead of deciding against the complainant on the ground that he already has another way of approach to his own house, ought to enquire whether or not the new road has been in the use and occupation of the complainant, and if so, for how long, and if he holds him to be in such possession to retain him in it, leaving the owner of the land to determine the question of right to the easement in the Civil Court.

Dewan Elahee Newoz Khan v. Suburunnissa, 5 S. W. R. Cr. R. 14.

In cases of disputes concerning the possession of land under section 318 of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate has no jurisdiction to interfere, unless he is first satisfied of the existence of a dispute likely to cause a breach of the peace.

Sreemunto Duloui v. Ramchand Aduck, 5 S. W. R. Cr. R. 57.

A Deputy Magistrate has no jurisdiction under section 320 of the Code of Criminal Procedure (Act XXV of 1861) to order a ditch which was once a pathway, but afterwards filled up, to be opened out, and a wall to be pulled down, which had been built upon it before any com-

plaint was made about filling up the ditch. Even if he had jurisdiction, no such order should be passed without legal proof that the ditch and pathway had been open to the use of the public or of the prosecutor.

Grijamonee v. Ishur Chunder, S. W. R. 1864, Cr. R. 2.

In case of disputed possession of land, the Magistrate should record the proceedings required by section 318, Code of Criminal Procedure (Act XXV of 1861) and look to possession, not to right, *i. e.*, maintaining in possession the party in possession, and forbidding disturbance of possession. Magistrates should not take up judicial work on Sundays.

Maharajah Gobindnath Rai v. Rajah Anund Nath Rai, 5 S. W. R. Cr. R. 79.

Oral evidence is the principal matter upon which Magistrates can proceed in determining a question of possession under the Code of Criminal Procedure (Act XXV of 1861).

Ramjeebun Doobey v. Luchmonee Dabea, S. W. R. 1864, Cr. R. 5.

A Magistrate has no authority to restore to possession a person who has been illegally dispossessed. He must declare the party in actual possession, entitled to retain possession until ousted by due course of law, and forbid all disturbance of such possession in the meantime.

Ramdyal v. Chintamonee, S. W. R. 1864, Cr. R. 28.

When there was a dispute as to the actual possession of land, not between two co-proprietors, but between rival ryots, Held, that, instead of attaching the whole estate, under section 319 of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate ought to have settled the dispute as between the ryots.

Kisheb Chundor Sandyal, petitioner, 6 S. W. R. Cr. R. 4.

Prompt action is generally requisite in cases of dangerous disputes regarding the possession of land.

Mussamut Zuhoorun, petitioner, 6 S. W. R. Cr. R. 4.

Held, that it would be highly technical and unnecessary to interfere with a Magistrate's order under section 318, Code of Criminal Procedure (Act XXV of 1861) on the ground that the Magistrate had not formally stated that he was satisfied that a dispute likely to induce a breach of the peace existed, when obviously the Magistrate had information of that kind before him.

Shama Soondery Debia v. Jardine, Skinner & Co., 6 S. W. R. Cr. R. 10.

A Magistrate ought not to interfere, under section 318, Code of Criminal Procedure (Act XXV of 1861) with the execution of a decree of the Civil Court. If called on to interfere at all, because he is apprehensive of a breach of the peace, he should under section 319 maintain in possession the person who has been actually put in possession by a decree of the Civil Court.

Rajah Anund Nath Roy, petitioner, 4 S. W. R. Cr. R. 12.

In a case of disputed possession likely to lead to a breach of the peace, the Magistrate, instead of merely binding down the parties to keep the peace, and declining to interfere further, is bound to dispose of the question of possession under section 318, Criminal Procedure Code (Act XXV of 1861).

Harvey v. Brice, 4 S. W. R. Cr. R. 26.

The omission of a Magistrate to record a proceeding in a case of disputed possession of land, is not a mere informality in procedure, but renders the whole of the Magistrate's proceedings illegal. Where the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other with reference to the point of possession.

Shib Pershad Roy v. Rughoonath Singh, S. W. R. 1864, 295.

Section 318 of the Code of Criminal Procedure (Act XXV of 1861) does not mean that any party who can show in the Civil Court a possession prior to the Magistrate's award, shall be entitled to have the award set aside, and to be put in possession, but only that the party out of possession must prove title.

Kashi Kishor Roy v. Tarini Kant Lahori, 3 B. L. R. A. Cr. 76.

A Magistrate has no power to decide a question of possession, under section 318 (Act XXV of 1861), until he has recorded a proceeding, stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace.

Jugesh Prakas Ganguli v. Nilkamul Mookerjee, 3 B. L. R. A. C. 57; S. C. 11 S. W. R. Cr. R. 43.

A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land, obtained, pending his suit, an order from the Magistrate, under section 318 of the Criminal Procedure Code (Act XXV of 1861) that he should be maintained in possession until ousted by due course of law. The suit was dismissed, plaintiff failing to prove his title, and the defendants then applied to the High Court, under section 404 of the Criminal Procedure Code, to set aside the Magistrate's order and put them in possession. Held, that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected.

Bhadreshwari Chowdrani in re, 7 B. L. R. 329; S. C. 16 S. W. R. Cr. R. 17.

A Magistrate before proceeding under section 318 of the Criminal Procedure Code (Act XXV of 1861) must be satisfied by evidence that a dispute likely to induce a breach of the peace exists. A police report is not evidence.

Doorjun Singh v. Shibba, 3 N. W. P. Rep. All. 171.

Under section 318 of the Criminal Procedure Code (Act XXV of 1861) a Magistrate, having satisfied himself that a breach of the peace is likely to ensue, should enquire which party is in possession, and after satisfying himself on that point, should record a proceeding declaring

the party he held to be in possession to be entitled to retain possession, until ousted by due course of law, and should forbid any disturbance of such possession; but he should not go on to enquire into the rights of the parties in possession, or forbid the exercise of any right by such party. An order passed under section 318 of the Criminal Procedure Code, does not fall within the provisions of clause 7, section 1 of Act XIV of 1859.

Mahant Dhanraj Giri Goswami v. Sripati Giri Goswami, 2 B. L. Rep. Ap. Cr. 27.

A. and B. had a dispute about possession of a certain muth. A. was declared by the Magistrate under section 318 of Criminal Procedure Code (Act XXV of 1861) to be in possession. Subsequently B. got a certificate under Act XXVII of 1860, and applied to the Magistrate for possession, which was given to him. Held, that the Magistrate's order giving possession to B. was irregular and must be set aside.

Reg. v. Toyluckonath Sircar, 2 S. W. R. Cr. R. 64.

Section 320 of the Code of Criminal Procedure (Act XXV of 1861) does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way.

Sabhee Sing & others, 6 S. W. R. Cr. R. 50.

Before a Magistrate can pass any order regarding possession of disputed land, he must observe the forms prescribed by section 318, Code of Criminal Procedure (Act XXV of 1861).

Amrithnath Jha v. Ahmed Reza & another, 6 S. W. R. Cr. R. 61.

In a case of disputed possession of land under section 318, Code of Criminal Procedure (Act XXV of 1861) Held, that the Magistrate was wrong in not recording a sufficient proceeding showing the grounds upon which he was satisfied that the dispute was one likely to lead to a breach of the peace; and that, if the parties consented to waive that point by consenting to go into the whole question, the Magistrate was wrong in taking the title of one person as *primâ facie* evidence of his possession, and throwing the *onus* on the other and precluding that other from proving his title.

Moonshee Hurukh Lall, 6 S. W. R. Cr. R. 74.

Section 320, Code of Criminal Procedure (Act XXV of 1861) is not intended to provide a substitute for a civil suit to declare the rights of the parties, but only empowers the Magistrate to order that possession shall not be taken by any party to the exclusion of the public, until the party claiming possession obtain a decree for exclusive possession.

Watson & Co. v. Ranee Surnomoye, 8 S. W. R. Cr. R. 63.

Two investigations under section 318, Code of Criminal Procedure (Act XXV of 1861) were before a Magistrate who, after deciding one of the cases, remarked on the other that, because the lands adjoined, he had taken the evidence in the two cases together and found it unnecessary to continue the enquiry further. Held, under section 434, that the parties kept out of possession, were entitled to full enquiry.

Gunganarain Poddar v. Deboo Mundul, 7 S. W. R Cr. R. 12.

On a charge of forcible ejectment, a Magistrate has nothing to do with the rights of the parties to the land.

Obilashery Debia & another, petitioners, 9 S. W. R. Cr. R 18.

A certificate under Act XXVII of 1860 simply empowers the person to whom it is granted, to demand and receive the debts due to the deceased, and is in no way a determination of a competent Civil Court of the right of such person to possession of land under attachment under section 319 of the Code of Criminal Procedure (Act XXV of 1861).

Mussamut Anundee Kooer v. Ranee Soonaet Kooer, 9 S. W. R. Cr. R. 64.

To satisfy the requirements of section 318 of the Code of Criminal Procedure (Act XXV of 1861), a Magistrate must himself enquire into the likelihood of a breach of the peace happening, and must come to a judicial decision upon it, and in conducting the subsequent investigation, he must examine the witnesses whom the parties have tendered.

Joyram Sing & others v. Jugnarain Doobey & others, 10 S. W. R. Cr. R. 16.

It is not necessary that the proceeding required by section 318, Code of Criminal Procedure (Act XXV of 1861) should be recorded in a particular form, or on a separate sheet; it is sufficient if it be recorded.

Toolsee Singh & others, Case of, 10 S. W. R. Cr. R. 64.

In investigating a case of dispute as to land between two parties under Chapter XXII of the Code of Criminal Procedure (Act XXV of 1861), a Magistrate found that one party was in possession, but there being a charge against both parties of rioting under section 147 of the Penal Code, he punished both parties. Held, that the party in possession were protected by section 104 of the Penal Code, in maintaining their possession, and the punishment inflicted on them was accordingly remitted.

Russool Nushyo & others, Case of, 11 S. W. R. Cr R. 3.

A Magistrate has a discretion whether he will interfere in a case of a dispute relating to the possession of land under section 320 of the Code of Criminal Procedure (Act XXV of 1861). The complainant must make out a sufficient case for the summary interference of the Magistrate under that section.

Goluck Chunder Mytee, Case of, 11 S. W. R. Cr. R. 9.

When in a case under section 318, Code of Criminal Procedure (Act XXV of 1861), a Magistrate has taken any evidence, he is not justified in refusing to proceed with the case, because the parties neglected to file written statements on the day fixed for filing the statements.

Reg. v. Sreeputt Giri Gossein, 11 S. W. R. Cr. R. 23.

A Magistrate cannot proceed under section 318 of the Code of Criminal Procedure (Act XXV of 1861), in a case of dispute arising out of a right of succession to a muth and its appurtenances, but should apply to the Judge under the provisions of Act XIX of 1841 to appoint

a curator, or make some order with regard to the property, till the right of succession is determined. The grant of a certificate under Act XXVII of 1860 does not decide the title to such land.

Bhoiro Mundul, Case of, 14 S. W. R. Cr. R. 28.

A Magistrate is bound under section 320 of the Code of Criminal Procedure (Act XXV of 1861), to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court.

Hurronath Chowdhry v. Rajender Chunder Roy & others, 15 S. W. R. Cr. R. 1.

A Sessions Judge has no power to interfere with an order of a Magistrate attaching disputed land under section 319 of the Code of Criminal Procedure (Act XXV of 1861).

Maseyk, J. W. in re, 15 S. W. R. Cr. R. 1.

The power of attaching land regarding which there is a dispute, conferred on a Magistrate by section 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zemindars are in possession by their ryots.

Gunganarain Mitter v. Gour Soonder Chowdhry, 15 S. W. R. Cr. R 85.

When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without enquiring who was the aggressor or the aggrieved party, to proceed under section 318 of the Code of Criminal Procedure (Act XXV of 1861), and to take whatever steps are in his opinion necessary to prevent a breach of the peace.

Bharut Chunder Bose v. Dwarkanath Chowdhry, 15 S. W. R. Cr. R. 86.

Where a Magistrate, proceeding under section 318, Code of Criminal Procedure (Act XXV of 1861), decides on the evidence in favour of a party as being in possession of the disputed land, the High Court cannot re-consider the Magistrate's decision, and decide which party is in actual possession.

Rai Mohun Roy & others v. J. P. Wise, 16 S. W. R. Cr. R. 24.

A Magistrate is not competent to interfere under section 318 of the Code of Criminal Procedure (Act XXV of 1861), with the execution of a decree of the Civil Court. When a Civil Court decree has been passed regarding the whole or any portion of disputed land, it is the Magistrate's duty to maintain that decree, and he cannot again institute section 318 proceedings regarding the land covered by it.

Koomar Poresh Narain Roy v. Watson & Co., 17 S. W. R. Cr. R. 3.

It is a misconception of the aim and object of the law, as well as a waste of time and of money to the parties, to come up to the Court under section 318 Code of Criminal Procedure (Act XXV of 1861) with questions of title to possession of land, which can only be settled in a Civil Court.

Ramrunginee Dossee v. Gooroo Doss Roy 17 S. W. R. Cr. R. 9.

The mere service of a notice upon a Mofussil naib, who takes no steps whatever to consult his employer or act under her directions, is not such a notice as is contemplated by section 318, Code of Criminal Procedure in a case of dispute regarding possession of land.

Goluckchunder Roy v. Rajmohun Bose, 17 S. W. R. Cr. R. 33.

The decision of the Deputy Magistrate was quashed (1) because the property in dispute being *ijmallee*, he had no jurisdiction to try the dispute under section 318, Code of Criminal Procedure (Act XXV of 1861), but ought to have proceeded in the manner laid down in Circular Order, No. 10, dated 16th April 1863; and (2) because a portion of the disputed julkur being situated within the district of Backergunge, the Deputy Magistrate of Furreedpore had no jurisdiction with reference to that portion of the julkur, which was admittedly not within the limits of his jurisdiction.

Emambandee Begum v. Tek Bahadoor & another, 17 S. W. R. Cr. R. 53.

A Magistrate has jurisdiction, under section 318, Code of Criminal Procedure (Act XXV of 1861) to prevent breaches of the peace in places where the rivers have dried up. The jurisdiction that was once there under section 30, is not taken away by reason of the land having appeared, and the water disappeared. It is not competent to a party who, where there is no clear evidence of actual possession, puts in certain documents which would be evidence of title, and invites the Magistrate to consider them as bearing upon the fact of possession, to object afterwards that the Magistrate has gone into the question of title. When a Magistrate is not satisfied that either of the contending parties was in actual possession, his proper course is to attach the property, and not give either party what might be supposed to be the advantage of a finding on his part that there was possession.

Where a Magistrate made an order under section 318, without previously recording a proceeding, his order was annulled, and the case sent back to him that he may proceed under the section.

Government v. Sreeputtee Roy & another, 17 S. W. R. Cr. R. 59.

A Magistrate cannot, under section 318, Code of Criminal Procedure (Act XXV of 1861), decide as to the respective claims or rights to actual possession, nor act upon former decisions to prove previous title or possession. All that he has to do is to find which party is in actual possession.

Mukhoda Dassee, appellant, 18 S. W. R. Cr. R. 4.

A Magistrate is bound, before attaching the property in dispute, to take evidence for the purpose of ascertaining who was in actual possession of the subject of dispute, and to record his grounds for being satisfied that a breach of the peace was likely to occur.

Koylas Nath Roy v. Kalleenarain Chuckerbutty, 18 S. W. R. Cr. R. 24.

The order of a Deputy Magistrate in a preliminary proceeding under section 318, Code of Criminal Procedure (Act XXV of 1861) requiring both parties to produce "a written statement of their respective claims to the share in dispute" was held to mean that the parties were to file their statement in respect of their *claims to possession;* and the Deputy Magistrate having subsequently retained in possession the person whom he found in possession, his proceeding was considered sufficient, notwithstanding that the order passed by him, was adverse to an absent co-sharer.

Shib Churn Chuckerbutty v. Ishen Chunder Chuckerbutty, 18 S. W. R. Cr. R. 27.

In a dispute concerning land, the Magistrate having found one party to be in possession, had no power to give the opposite party found not to be in possession, permission to cultivate the disputed land pending the decision of any possessory action he might bring under section 15, Act XIV of 1859.

Ramrunginee Dassee v. Gooroodoss Roy, 18 S. W. R. Cr. R. 36.

Section 318, Code of Criminal Procedure (Act XXV of 1861) refers only to disputes concerning land, but not to a dispute as to the right to collect the rents of a joint undivided estate in a certain proportion. The latter must be dealt with under Circular Order, No. 10 of 18th April, 1863, and section 26, Regulation V of 1812, as amended by Regulation V of 1827.

Kishoree Mohun Roy & others, petitioners, 19 S. W. R. Cr. R. 10.

Under the provisions of section 318 of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate should specify the nature of the information received by him, and state the principal facts which by the exercise of a judicial discretion he derives therefrom, and which in his judgment constitute grounds for believing that a dispute concerning certain land exists, which is likely to induce a breach of the peace; and the *roobokaree* which section 318 prescribes, should plainly set out, without reference to any other documents at all, the actual facts which constituted the ground for such belief on the part of the Magistrate. Case of Sutherland, (18 S. W. R. 11) explained.

Tarinee Churn Shah v Bonomali Nag, 19 S. W. R. Cr. R. 33.

Although a road may be a private one, a Deputy Magistrate has jurisdiction to make an order under section 208, Act XXV of 1861, if it appears that section 320 applies to it, that is, if it is open to the use of a certain class of persons who used it a few days before the occurrence of the dispute.

Gogun Pramanick v. Ranee Surnomoyee & others, 19 S. W. R. Cr. R. 39.

Applications by parties who have been found not to have been in possession, to set aside proceedings of a Magistrate under section 318 of the Code of Criminal Procedure (Act XXV of 1861), which are taken in order to prevent breaches of the peace, ought to be made without any delay.

Prithiram Chowdhry Rai Bahadoor, petitioner, 20 S. W. R. Cr. R. 51.

The possession regarding which parties are required to give proof in a case under section 530, Act X of 1872, relating to a dispute for land in respect of which a breach of the peace is apprehended, is possession at the time the proceedings are instituted by the Magistrate, and not possession at the time the Magistrate comes to his decision.

Reg. v. Soumber Ahir, 20 S. W. R. Cr. R. 57.

In a dispute for possession of land under section 530, Act X of 1872, the written report of an Ameen who was deputed to hold a local enquiry, is not sufficient by itself to justify an order retaining a party in possession until ousted by due course of law.

Reg. v. Protab Chunder Barooah, 12 S. W. R. Cr. R. 2.

Where a Magistrate found that an order of his predecessor, made two years previously, with regard to possession of certain land had not been complied with, he enforced the order and changed the possession in accordance with that order. Held, that the Magistrate ought, under section 491, Code of Criminal Procedure (Act X of 1872) to have maintained the possession which he found, even if it was inconsistent with his predecessor's order, and that he ought not to have taken any steps in the matter, unless some one actually in possession, and guaranteed possession by that order, came to complain to him that his possession was threatened, or that he had just been forcibly turned out, and asked in pursuance of that order to be maintained in possession.

Arzanoollah v. Nazir Mullick & others, 21 S. W. R. Cr. R. 22.

The powers of dealing with cases coming before the High Court under sections 294, 295, 296, are only such as are declared in section 297, under which section the Court can only deal with errors in judicial proceedings :—An order by a Magistrate, under section 518, Code of Criminal Procedure (Act X of 1872), upon information, and without any formal enquiry or taking of evidence, prohibiting a person from re-opening a haut, is not a judicial proceeding.

Mir Dhunoo v. Thomas Brown, 21 S. W. R. Cr. R. 25.

When a local enquiry under section 533 of the Code of Criminal Procedure (Act X of 1872) is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it, and to have an opportunity of rebutting the deputed Magistrate's report if he thinks it necessary so to do.

Mudhoosoodun Shaha v. Bejoy Gobind Chowdhry & others, 21 S. W. R. Cr. R. 55.

In a case of dispute regarding land of a considerable area, in which both parties contended that they held possession of the area through the means of ryots, it was held that the Magistrate, instead of making an order under section 530 of the Code of Criminal Procedure, that the land should remain in the possession of one of the parties until the decision of a competent Civil Court, should have proceeded to consider the question, which party was in possession of the constituent portions of the land, piece by piece, by the hands of his ryots.

Gour Mohun Majee v. Doollubh Majee, 22 S. W. R. Cr. R. 81.

When a person summoned to answer a charge of criminal trespass, appeared and filed a written statement, and the Magistrate proceeded accordingly, without recording a proceeding under section 530 of the Code of Criminal Procedure (Act X of 1872), it was held that the irregularity was covered by section 283 of the Code, the rule therein laid down being intended to extend to all proceedings before Magistrates.

Sheikh Tunnoo v. Kureem Buksh, 23 S. W. R. Cr. R. 2.

Where there was a dispute as to the ownership of land, on which the complainant's cattle were found, the complainant stating that the land belonged to A. who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle) claiming the land as his own, it was held that the order of the Magistrate referring the parties to the Civil Court was illegal, and that he should have disposed of the case himself under the Cattle Trespass Act, I of 1871, section 22.

Bejoynath Chatterjee v. The Bengal Coal Company, 23 S. W. Cr. R. 45.

The possession in regard to which the Magistrate's jurisdiction under section 530 of the Code of Criminal Procedure (Act X of 1872) should be exercised, must be of a real and tangible character. When a party claims under a document or agreement, the right of doing certain things over a large extent of territory, the performance of acts under such alleged right, in one portion of the ground over which the right extends, although it may be good and sufficient for the purpose of keeping alive that right, so as to be an answer to the plea of limitation raised in a civil suit, is not of itself a sufficient possession on which the Magistrate's order under section 530 may be based, for the purpose of forbidding in a distant locality, acts not necessarily in conflict with such possession, though at variance with the right.

Luchmi Doss & others v. Pallat Lall, 23 S. W. R. Cr. R. 54.

An order under section 534, Criminal Procedure Code, (Act X of 1872) must be founded on a finding, that the person in whose favour it was made, was dispossessed of specific immoveable property by the use of criminal force, which formed a material ingredient in the matter of a criminal conviction, and it must in terms restore such person to the property from which he had been dispossessed.

Kali Prosunno Roy, petitioner, 23 S. W. R. Cr. R. 58.

The holding of an enquiry, under Chapter XL of the Code of Criminal Procedure (Act X of 1872), is a matter entirely within the discretion of the Magistrate of the District, or of a division of a district, and the High Court has no authority to require him to proceed under that Chapter. The taking of security for keeping the peace, is also a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed.

Guru Churn Sen v. Kalinath Doss Biswas, 23 S. W. R. Cr. R. 62.

In a case under section 530, Code of Criminal Procedure (Act X of 1872), the High Court set aside the proceedings of a Deputy Magistrate, who, on succeeding his predecessor who had gone into the case, instead of recalling the witnesses *de novo*, and examining them himself, decided the question of possession on the evidence which had been taken by his predecessor.

Gudadhur Kamila v. Baidanath Jana & others, 24 S. W. R. Cr. R. 6.

An application to have it declared, that a certain place could not be used for cremation purposes, would not come under Act X of 1872, section 521.

Chowdhree Zuhoorul Huq & others v. Kurum Chand Singh & others, 24 S. W. R. Cr. R. 15.

A Deputy Magistrate was held to have been authorized by Act X of 1872, section 532, in inquiring into the matter of a dispute between two parties, concerning the use of the water of a certain pyne, and when he found that the water was open, under certain restrictions, to the use of one of the parties, he was justified in restraining the other from a cause of action, which had the effect of keeping that water exclusively in his own possession, provided the right of use had been exercised within three months, if capable of being exercised throughout the year; or during the last season, if it existed at particular seasons.

Durias Singh & others v. Uma Proshad & another, 24 S. W. R. Cr. R. 16.

Where an inquiry had already been set on foot, under Chapter XXXVII of the Code of Criminal Procedure (Act X of 1872), and the Magistrate at the same time, came to a decision under section 530, that a certain party was in possession and passed an order maintaining him in possession. Held that, although no particular proceeding was recorded under section 530, yet the preliminaries therein prescribed, had been substantially complied with.

Raneegunge Coal Association v. Hemlall Ghatwal, 24 S. W. R. Cr. R. 17.

The object of Act X of 1872, section 530, is to prevent a breach of the peace, by retaining in possession the party already there, until such time as the Civil Court can pronounce on the two conflicting claims. When a Civil Court decree is once passed, the right as between the litigants is decided, and there is no more place for a summary order which proceeds not upon title, but on mere possession.

Goshain Luchmun Pershad Pooree & others v. Pohoop Narain Pooree, 24 S. W. R. Cr. R. 30.

Before a prohibitory order under section 518 can be made, there ought to be information or evidence before the Magistrate, that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act, would prevent such riot or affray.

Joykissen Mookerjee & Peary Mohun Mookeerjee, petitioners, 24 S. W. R. Cr. R. 40.

A Deputy Magistrate, after notice issued under the Code of Criminal Procedure (Act X of 1872), section 530, to two parties, finding himself unable to determine who was in possession, attached the property in dispute. Upon this, a third party represented, that he as landlord, had taken possession of the land on the death of the person to whom it had been leased. But the Deputy Magistrate refused to remove the attachment, holding that the landlord's possession was without colour of law. Held, that the duty of the Deputy Magistrate, under the circumstances, was to withdraw his order.

Reg. v. Mohesh Chunder Roy & others, 24 S. W. R. Cr. R. 67.

Where a dispute exists about land, which is likely to induce a breach of the peace without such breach being imminent, the Magistrate should proceed under Act X of 1872, section 530, and not under section 491.

Rakhal Dass Sing & another v. Rajah Sheo Pershad Singh, 24 S. W. R. Cr. R. 73.

Where an Assistant Magistrate, acting under Act X of 1872, section 531, found one of the proprietors of an ijmalee talook in actual possession of a 12-anna share which was all that he claimed, and it was in evidence that the rents had till the commencement of the dispute been collected in distinct and separate shares, he was held to have committed an error in law in attaching the whole estate as involved in the dispute. The words "institution of proceedings" in section 531 mean the commencement of the action which results in the application to the Magistrate's Court; and the possession to be determined is possession at the time the dispute arose, *i. e.*, at the time the police reported that a breach of the peace was likely to take place.

Puddomonee Dassee v. Juggo-dumba Dassee, 25 S. W. R. Cr. R. 2.

Where a dispute between parties is not concerning land or its boundaries, or concerning houses, water, fisheries, or produce of land, but simply as to what collections one of the parties has made, and what rents he is entitled to collect under a decree of Court, the case does not come under the provisions of Act X of 1872, section 530, but under the ruling in 18 W. R. Cr. Rul. pp. 35 and 36.

Where a case falls under section 530, and the Magistrate proceeds on the basis of a police report which does not state that there was any collection of men on the part of the opposite party, the proceeding is not a sufficient proceeding under that section.

Bynath Sahoo v. Rugoonath Pershad, 25 S. W. R. Cr. R. 16.

Where each of two parties claimed the same share of certain property, as a whole estate, neither alleging that the other was joint with him in any way, and the Magistrate, without reference to the right of possession, went into the question of who was in possession, and maintained the possession of the party found in possession, the High Court held that the case fell under Act X of 1872, section 530, and saw no necessity to interfere with the decision.

Kassim Hassim Surty & others v. Abrahim Soleman & others, 25 S. W. R. Cr. R. 24.

A mooktear holding and managing a burial-ground for several proprietors cannot constitute himself a judge of their respective rights. A case in which several persons dispute about the proprietory right in a burial-ground should be tried in a Civil Court, and does not properly come under section 530, or section 532 of the Code of Criminal Procedure.

Reg. v. Kaly Kishore Roy & others, 25 S. W. R. Cr. R 68.

Where a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement, but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended: Held, that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under section 530, (Act X of 1872) if, on completion of enquiry he found himself in the position described in section 531: and that if there was any new dispute, he ought to have proceeded *de novo;* but that the best course to pursue would be to exert his powers under Chapter XXXVII.

Sheikh Mungloo & Peer Khan v. Durga Narain Nag, 25 S. W. R. Cr. R. 74.

Where a police officer reported that there was a probability of a breach of the peace arising, in consequence of a dispute about the possession of some land, and the Magistrate endorsed an order on the police report, calling on the Court inspector to summons the parties, without having recorded a proceeding, expressing his satisfaction with the grounds on which a breach of the peace was apprehended; and it was contended by the party, in whose interests the order finally passed by the Magistrate was made, that the fact of the passing of the order embraced the necessary conviction: Held, following the current of decisions on the point, that, in order to justify, a Magistrate in interfering with public rights under section 530 of the Criminal Procedure Code, (Act X of 1872), it was necessary, not only that he should be satisfied upon sufficient grounds that a breach is likely to occur, but that he should acquire a jurisdiction to deal with it by first recording a proceeding, expressing his opinion on the subject; and that the omission to record such a proceeding, is not a mere irregularity, but a *substantial* defect, lying at the root of the Magistrate's jurisdiction. Section 297 of the Criminal Procedure Code, which gives the High Court power to correct any material error in any judicial proceeding of a Subordinate Court, refers to errors in law, and not to errors in findings of facts. Held also, (KEMP, J. dissenting) that although symbolic possession is not entitled to weight as against a party proved to be in possession; yet in the absence of evidence, it is in itself deserving to be taken into consideration.

Satherland, J. D. & another. In the matter of the petition of,

The possession of a master by his servant—of a landlord by his immediate tenant, the person who pays the rent to him—of the person who has the property in the land by the usufructuary, come within the meaning of the words "actual possession" in section 318 of the

9 B. L. R. 299; S. C. 18 S. W. R. 11.

Code of Criminal Procedure (Act XXV of 1661). Their meaning is not limited to bodily possession. But a person is not in "actual possession" where the rents are paid by the actual occupier, not to him, but to an intermediate holder.

All that is required to make a proceeding under section 318 proper and valid, is that the Magistrate should be satisfied that a dispute exists, and he is to record the grounds of his being so satisfied. There is nothing which defines upon what grounds he shall be so satisfied, or limits him to being satisfied by evidence given before him.

If a Magistrate is satisfied that the circumstances of a case require it, he may make an order under section 282 notwithstanding that he has taken recognizances under section 282.

Gabinda Chandra Ghose & another. In the matter of the petitions of, 9 B. L. R. App. 39; S. C. 18 S. W. R. Cr. R. 54.

Act XXV of 1861, section 318. Parties to proceedings under section 318.

Who are to be served with notices under section 318. Right of a party in proceedings under section 318 to summon witnesses.

Discretion of Magistrate.

The Deputy Magistrate of K. instituted proceedings under section 318 of the Code of Criminal Procedure with *respect* to certain land possession of which was claimed by A. C. S. and B. B. on one side, and G. C. G. and S. D. on the other. Upon the complaint of one T. Gomasta of A. C. S. and B. B. notice was ordered to be served on G. C. G. After the Deputy Magistrate had taken evidence as to actual possession from both parties, S. D. presented a petition at the last moment praying to be made a party, as she was a co-sharer with G. C. Ghose and others and was in possession, and for summonses against certain persons to appear and give evidence in support of her claim. The Deputy Magistrate examined one witness, who was present in Court, on her behalf, and refused to postpone the case for the examination of the other witnesses named in her petition. The Deputy Magistrate held that A. C. S. and B. B. were in possession and passed an order retaining them in possession. G. C. G. and S. D. moved the Sessions Judge to refer the proceedings of the Deputy Magistrate to the High Court under section 434 of the Code of Criminal Procedure, to have the order passed by the Deputy Magistrate quashed for various reasons. The Sessions Judge, however, referred the proceedings to the High Court on only two points. He was of opinion that as A. C. S. and B. B. claimed to hold the land under a lease from several parties as co-proprietors, one of whom was G. C. G. who had appeared and denied the genuineness of such lease, and of possession under it, the Deputy Magistrate was wrong in passing a decision in the matter without giving notice to the other co-proprietors, as required by section 318 of the Code. He was also of opinion that the Deputy Magistrate ought not to have refused to summon the witnesses named by S. D. on the ground that her application was made at the last moment.

GLOVER, J.:—There is nothing in the law which enjoins the serving of notice upon all the co-sharers in an estate which may, in some shape or

other, form the subject of a litigation under section 318. That section says, that, after a Magistrate is satisfied that a dispute likely to induce a breach of the peace is about to take place within his jurisdiction, he shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to give in written statements of their respective claims. It is quite clear that the other co-sharers who have not been served, were not concerned in the dispute, for in that case they would have undoubtedly appeared in the Court below and taken steps to support the reference made by the Judge. The only parties concerned were those who did appear before the Deputy Magistrate: and although it may be technically said, that S. D. got no notice, it is clear that she was all along aware as to what was going on, for she appeared in Court and prayed to have witnesses examined on her behalf. That her case was not thoroughly gone into was her own fault, for the petition asking for the examination of the witnesses was made, as the Deputy Magistrate says, at the last moment; and in the exercise of the discretion allowed him by the law, he refused to grant any further postponement of the case. Under the circumstances it appears to us, that there is no ground on which to support the Judge's recommendation, and we accordingly decline to interfere with the order of the Magistrate.

Shamasankar Mozumdar, In the matter of the petition of, 9 B. L. R. App. 45; S. C. 18 S. W. R. Cr. R 64.

The Assistant Magistrate of Goalundo, on perusal of a police report and the evidence in certain other cases, held that there was a likelihood of a breach of the peace taking place with regard to a piece of land, and issued notices on Baboo Shamasankar Mozumdar and Rani Anandamoye Dasi as parties concerned in the dispute likely to give rise to a breach of the peace, to file written statements of their respective claims to actual possession. Both sides filed written statements. Shamasankar Mozumdar then petitioned the Court to summons witnesses on his behalf alleging that he was unable by his own efforts to procure the attendance of his witnesses. The Assistant Magistrate merely ordered the petition to be placed on the record (*nathi shamil pesh*) and proceeded to examine witnesses tendered by Rani Anandamoye, and upon their evidence held that she was in possession, and passed an order retaining her in possession. In his judgment the Assistant Magistrate remarked with reference to the petition of Shamasankar Mozumdar, praying the Court to procure the attendance of his witnesses, that in cases coming under Chapter XXII of the Criminal Procedure Code, (Act XXV of 1861) he had no power to summon any witnesses.

The judgment of the High Court was delivered by KEMP, J.:—The first point taken in this case is that the proceeding of the Magistrate under section 318 of the Criminal Procedure Code, is based upon the report of the police officer alone, and such report not being legal evidence, all the proceedings subsequently taken by the Magistrate are without jurisdiction. On referring to the record, we find that the Magistrate did not proceed upon the report of the police officer alone, in which case, perhaps under the rulings of this Court, the objection might avail; (see In the matter of the Petition of J. D. Sutherland), but we find that the Magistrate refers to evidence taken in other cases, which we must assume he inspected, and he goes on to say that

he is satisfied upon that evidence that there was a likelihood of a breach of the peace. This objection is therefore overruled. The next objection is, that the petitioner has not had a proper hearing in as much as the Magistrate held that the law did not confer upon him the power to summon witnesses in cases of this description, and when the petitioner prayed the Magistrate to summon his witnesses, no order beyond placing his petition on the record was passed. On referring to the judgment of the Magistrate, we find that he states that he can find no provisions in Chapter XXII for the summoning of witnesses. No doubt there is no mention in that Chapter of any particular provisions under which witnesses are to be summoned; but in cases coming under section 318, oral evidence as to the fact of possession is always adduced, and it is the duty of the Court, if the parties cannot produce their witnesses, to issue summonses for their attendance, now, in this case, it is clear that the petitioner petitioned the Magistrate, urging his inability to produce his witnesses, and asking for the assistance of the Court to summon these witnesses. It does not appear that any proper order was passed upon this application, and therefore it amounts to this, that the petitioner has not had a proper hearing. We therefore send back the case. The Magistrate will summon the witnesses for the petitioner, and, after hearing and considering their evidence, pass a fresh decision.

Khetter Monee Dassee v. Sreenath Sircar & others, 11 B. L. R. App. 5; S. C. 20 S. W. R. Cr. R. 14.

This case was referred by the officiating Sessions Judge of the 24-Pergunnahs, under section 296, Act X of 1872, for the purpose of annulling, under the powers of revision vested in the High Court, the proceedings of the Joint-Magistrate of Diamond Harbour, in that district, who, attached some 57 bigas of paddy lands, and also gave orders relating to the disposal of the crops which had been previously cut by order of the said Joint-Magistrate.

Per Jackson, J.:—Under the rulings of this Court, applicable to the sections relating to cases of this sort in the old Code, (Act XXV of 1861) it has been repeatedly held by the High Court that an adjudication on legal grounds as to the imminence of a breach of the peace was a necessary preliminary to the commencement of proceedings. Section 530 of the new Procedure Code, (Act X of 1872) supersedes those rulings; but of course the benefit of this section cannot be claimed in respect of any irregularity in the present proceedings. The error to which I refer, and which is an error under the present Procedure Code, is one, which I think vitiates the order of the Joint-Magistrate. Although, as I have already stated, the proceedings were commenced under the old Code, yet the enquiries made and the order passed were under the present Code. Section 530, Act X of 1872, provides:—"Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information; but the question of possession must be decided on evidence taken before him." Chapter XXV deals with the mode in which such evidence is to be taken, and by section 332, it is provided that, "in enquiries and trials (other than summary trials) under this Act, the evidence of the witnesses shall be recorded by the Magistrate or the Sessions Judge, as the

case may be, in the following manner." Now from trials there are first excepted "summary trials" and in respect of these a distinct procedure, including provisions as to evidence, has been provided by Chapter XVIII of the Code. Then "trials" after that exception, have been again subdivided into "summons cases" under section 333 and other trials which are included with enquiries in the words "all other cases" in section 334, and consequently it follows that we are to look to section 334 and the following sections for the manner in which evidence is to be recorded in enquiries such as that now under consideration before the Magistrate. Section 334 directs that in such cases "the evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing, and under the personal direction and superintendence, of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge." Under this provision there is no exception whatever in favour of cases in which no appeal lies. The Joint-Magistrate, therefore, was entirely in error in omitting to record the evidence in the mode prescribed by section 334 and the following sections. This appears to us to be an error so material, that under section 297 we are bound to quash the order of the Joint-Magistrate, as being founded on no evidence.

Empress v. Thacoor Dyal Sing & another, 3 I. L. R. Calc. 320.

In a case of disputed possession between two rival zemindars, constructive possession through intermediate holders (ticcadars) to whom the ryots pay rents, is not such possession as is contemplated by section 530 of the Code of Criminal Procedure (Act X of 1872).

Kunund Narain Bhoop, in the matter of the petition of, 4 I. L. R. Calc. 650; S. C. 3 C. L. R. 551.

The power given to a Magistrate to make a binding declaration as to the possession of any property, is an exceptional one, and section 530 of the Criminal Procedure Code (Act X of 1872) limits the exercise of that power to cases in which the Magistrate is satisfied that a dispute, likely to induce a breach of the peace, exists; it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate. The grounds for his belief as to the existence of a likelihood of a breach of the peace, must be recorded.

Although no particular mode of giving notice, calling upon parties to attend under this section before the Magistrate, has been provided, yet the language of the section indicates that the notice shall be addressed to known individuals, and not be in the form of public proclamation on citation.

There is no provision in the Criminal Procedure Code for allowing an intervenor to come in, in the middle of proceedings held by a Magistrate under this section.

Mackenzie v. Shere Bahdoor Sahi, in the matter of the petition of, 4 I. L. R. Calc. 378.

The possession given by an Ameen in a butwara proceeding, is simply one of ownership and not of occupancy. Such possession cannot, therefore, in proceeding under section 530 of the Code of Criminal Procedure, (Act X of 1872) be held to oust tenants occupying lands previous to such delivery of possession.

Mohesh Chunder Khan, in the matter of the petition of, 4 I. L. R. Calc. 417.

Ouster by one person, of another lawfully in possession of property, confers no rights on the former which can be recognized in proceedings taken under section 530 of the Code of Criminal Procedure. The Court should refer back to a time previous to the quarrel when such possession was peacefully enjoyed by one or other of the disputants.

Abdool v. Luckynarain Mundul & others, 5 I. L. R. Calc. 132.

Per AINSLIE, J. :—In dealing with the civil rights of a subject under section 518 of the Criminal Procedure Code, it is incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient enquiry, as to whether the act prohibited as likely to cause a breach of the peace is within, or is in excess of, the legal right of the person forbidden to do it; and, if necessary, to deal with the case under the other provisions of the Criminal Procedure Code, which enable him to meet cases of probable breach of the peace.

Per BROUGHTON, J. :—Where an order on the face of it appears to have been made without jurisdiction no subsequent explanation can make it good.

Gobind Chunder Moitra v. Abdool Sayad & others, 6 I. L. R. Calc. 835; S. C. 8 C. L. R. 217.

On the 20th March 1879, A. applied to have certain lands, which he had lately purchased, registered in his name. The order of the Deputy Collector, declaring that A. had proved possession, and was entitled to registration, was not passed until the 24th December 1879. Prior to A.'s purchase, B. and C. had, on the 6th March 1879, obtained registration of the same property. The proceedings were sent to the Commissioner, who on the 29th September 1880, declared A. to be entitled to the land: and in October the registration in the names of B. and C. was cancelled, and A.'s name was finally registered. In July 1880, proceedings under section 530 of the Criminal Procedure Code, (Act X of 1872) were commenced upon the petition of certain ryots, who alleged that other ryots, at the instigation of A. were going to do acts which would lead to a breach of the peace. The Deputy Magistrate, the same person who, as Deputy Collector, had decided the land registration case in favour of A. proceeded under section 530 to consider the question as to who was in possession, and found that B. and C. were in possession. Held, that the Deputy Magistrate could not, in these proceedings, set aside the order which he had made in the registration case, as that order could only be set aside in a regular suit. The proceedings recorded by the Deputy Magistrate did not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question, between A. on the one side, and B. and C. on the other, nor did it set forth the grounds upon which he was so satisfied that such dispute existed.

Held, that the proceeding was therefore defective. In the proceedings, the Magistrate referred to a police report, which, however, did not show that a breach of the peace was imminent. Held, that although this report might be taken to be incorporated by reference, yet that it was not sufficient to justify the order.

Per FIELD, J.:—Unless the parties are able to show that there is such a dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand and not proceed further. When the rights of the parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistrate to maintain the rights of the successful party, and the proper course for the Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under section 491 of the Criminal Procedure Code, and require from such person security to keep the peace.

Damodur Biddyadhur Mohapatro v. Syamanund Dey, 7 I. L. R. Calc. 385; S. C. 8 C. L. R. 514.

In order to justify a Magistrate in interfering under section 530 of the Criminal Procedure Code, (Act X of 1872) it is necessary that he should be satisfied that there exists a dispute concerning land which is *likely to induce a breach of the peace, i. e.*, there must be a reasonable apprehension that a disturbance of the peace is likely to occur, rendering it necessary for him to take immediate steps to prevent it, and not merely that it is *probable* a breach of the peace *may* occur if proceedings under section 530 be not taken.

Quære:—Whether it is necessary that a preliminary proceeding should first be recorded to give the Magistrate jurisdiction.

Kali Kristo Takur v. Golam Ali Chowdry, 7 I. L. R. Calc. 46; S. C. 8 C. L. R. 245.

In proceedings under section 530 of the Criminal Procedure Code, the Magistrate recorded the following words: "Whereas from the police report a breach of the peace probable," and found that certain persons were in possession. Held, that, although the record of grounds was unsatisfactory, as the initial proceeding did not contain within itself all which the law requires to be recorded, *viz.*, in the first place, that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists, and in the second place, the ground upon which he is so satisfied, yet that, as the police report from which the grounds for apprehending a breach of the peace appeared was incorporated by reference, the final order was not defective. In re Gobind Chunder Moitra, (I. L. R. 6 Calc. 835) distinguished. No sufficient evidence of possession was produced before the Magistrate, but evidence as to the title of the person in whose favour the Magistrate found was given, and the Magistrate based his decision upon the latter evidence, and determined the case with reference to the merits of the claims of the parties to the *right* of possession. Held that, although the Magistrate would have been justified in looking to the evidence of title in corroboration of the evidence of possession, he was wrong in basing his decision on the evidence of title, and his order was set aside.

Bunwari Lall Misser in re & Raja Radha Pershad Singh, 1 C. L. R. 136.

A Magistrate cannot, under section 530, Code of Criminal Procedure, (Act X of 1872) order that a person be kept in possession until he has reaped the crop standing on the ground, and then that he shall give way to another. When there have been long pending disputes in the Courts, he should determine who was in peaceable possession when they commenced.

Krishna Mohun Bysack in re, 1 C. L. R. 58.

The existence of the circumstances mentioned in Explanation I, is a condition precedent to the action of a Magistrate, under section 518, Code of Criminal Procedure (Act X of 1872). If the matter is one which cannot properly be dealt with under section 518, it does not fall within that section, and being a judicial proceeding, is not protected by section 520 from the action of a Court of Revision under section 297.

Okilchunder Biswas in re, 1 C. L. R. 48.

A proceeding under section 530, Code of Criminal Procedure, (Act X of 1872) must be recorded by the Magistrate stating the grounds of his being satisfied of the existence of a dispute regarding land, &c. likely to induce a breach of the peace, before he can order a person to be retained in possession thereof.

A Magistrate cannot bind over a person to keep the peace, unless he has adjudicated on evidence taken in the presence of that person that a breach of the peace is probable. If such person fails to attend on a summons duly served, a warrant should issue (section 494); the order for security cannot be passed *ex parte*.

Raja Leelanund Singh Bahadoor in re, 1 C. L. R. 273.

The doubt upon which a Magistrate can act, under section 531, Code of Criminal Procedure, (Act X of 1872) must arise from his inability to decide on evidence offered by the contending parties as to their possession, and not on a doubt entertained without such enquiry. A Magistrate acting under section 530, cannot interpret the meaning of a decree of a Civil Court. He can determine only the fact of actual possession.

Ram Soondaree Debee in re, 1 C. L. R. 86.

It is only when, after recording a proceeding under section 530, Code of Criminal Procedure (Act X of 1872) and taking evidence, a Magistrate decides that neither party is in possession or is unable to satisfy himself as to which party is in possession, that he can, under section 531, attach land in dispute. He is not competent summarily to order attachment without such preliminary proceedings.

Shonai Paramanick v. Jogendro Shaha & another, 1 C. L. R. 486.

When after enquiry a Magistrate finds that there is no sufficient cause for proceeding under section 521 of the Code of Criminal Procedure, he is competent to let the matter drop. As a Court of Revision, the High Court will not enter upon a consideration of the value of the evidence on which the Magistrate decided to act.

Umachurn Santra v Beni Madhub Roy, 7 C. L. R. 352

There being no present danger of a breach of the peace, the fact that such a breach is likely to take place at a future time will not justify a Magistrate in making an order under section 530 of the Criminal Procedure Code (Act X of 1872). The duty of making an enquiry under section 533 of the Criminal Procedure Code, should be deputed to a Magistrate, not a canungoe.

Ranee Anondomoyee Debee v. Luchman Pershad Gogo & others, 2 C. L. R. 264.

On the death of one of the persons concerned in a matter under section 530, Code of Criminal Precedure (Act X of 1872), just before those proceedings terminated in favour of that person and another, though it would be more regular for the Magistrate to postpone the proceedings, and make his representative a party in his place, the proceedings are not necessarily bad since the death has prejudiced no one.

Juggodeshary Chowdrain, petitioner in re, 3 C. L. R. 94.

In an inquiry under section 530 of the Code of Criminal Procedure (Act X of 1872), the only thing to be determined is the fact of actual possession. In a dispute between the wife of a lunatic and the manager of his estate, with regard to the possession of certain property, the Magistrate attached the property under section 531 of the Code of Criminal Procedure, on the ground that he was unable to satisfy himself as to who was in possession. It had been proved before him, that the wife was in actual possession, but there was a doubt as to whether she was not in possession merely as the agent of her husband. Held, that section 530 has only to do with actual possession; and that the Magistrate should have decided that the wife was in possession.

Baikunt Kumar & others, petitioners in re, 3 C. L. R. 134.

In a proceeding under section 530 of the Code of Criminal Procedure (Act X of 1872), the Magistrate must decide the fact of possession on evidence taken by himself, and not according to the result of a local inquiry made under section 533, unless the parties have consented to be bound thereby.

Per PRINSEP, J. :—The local enquiry referred to in section 533 should be restricted solely to some question relating to the features of the property about which the dispute has arisen; and should not be directed to any matter which can be proved before the Magistrate by oral evidence.

Shurut Chunder Banerjee & others v. Bamachurn Mookerjee, 4 C. L. R. 410.

Where a Magistrate made an order under section 518 of the Code of Criminal Procedure (Act X of 1872), directing one of two rival haut proprietors to remove his haut to such a distance as to render it useless for the purposes for which it was established, it was held that the order came within the purview of the Full Bench decision of Gopi Mohun Moulik *v.* Taramoni Chowdhrani, 4 C. L. R. 309; 5 I. L. R. Calc. 7, and might be set aside as in excess of jurisdiction.

Chunder Madhub Ghose v. Juggut Chunder Sen, 4 C. L. R. 483.

Where the proceeding recorded by a Magistrate, under section 530 of the Criminal Procedure Code, is based on materials which do not disclose sufficient ground for considering that a breach of the peace is imminent, an order calling upon the parties concerned in the dispute to attend in Court, and give in a written statement of their respective claims, in respect of the fact of actual possession of the subject of dispute, may be set aside as made without jurisdiction.

Chuttraput Sing, petitioner in re, 5 C. L. R. 200.

A certain mouzah having been sold in execution of a decree obtained upon a mortgage, the purchaser claimed a right under the sale to a haut appurtenant to the mouzah, and was put by the Nazir of the Civil Court into symbolical possession of the haut as well as of the mouzah. The judgment-debtor refused to give up actual possession of the haut, maintaining that it was debutter property of which he was the shebait. A breach of the peace being imminent in consequence of the rival claims, proceedings were taken under section 530 of the Criminal Procedure Code (Act X of 1872), and the Magistrate finding that the judgment-debtor was in actual possession of the haut made an order maintaining him in such possession until ousted by a Civil Court. Held, (setting aside that order) that the Magistrate had no power under section 530 of the Criminal Procedure Code, to direct the judgment-debtor to be retained in possession until ousted by a Civil Court, but was bound to see that the possession, as given by the Nazir was maintained, leaving it to the debtor to substantiate his claim as shebait in a Civil Court.

The Court accordingly directed that the purchaser be restored to possession, and that the Magistrate do see that he is kept in possession until ousted by due course of law.

Harak Narain Singh v. Luchmi Bux Roy, 5. C. L. R. 287.

Section 530 of the Code of Criminal Procedure (Act X of 1872) contemplates disputes between owners as well as occupiers.

Per JACKSON, J. :—Where a zemindar has let his lands in farm, he, his farmers, and the occupying ryots, are all, in their degree, concerned in any dispute as to possession which may arise, and they ought to be maintained in possession of the interests which they severally enjoy.

Sutherland *v.* Crowdy, 18 S. W. R. 11 cited. Empress *v.* Thakoor Doyal Singh, I. L. R. 3 Cal. 320 commented upon as having gone too far.

Prayag Singh v. Fuzool Hossein, 6 C. L. R. 206.

A Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought, the procedure to be adopted in such cases, being that provided in Chapter XIX of the Civil Procedure Code.

Mothoor Chunder Dass in re, 2 C. L. R. 509.

When the person on whom a notice has been issued under section 521, Code of Criminal Procedure (Act X of 1872) applies for a jury, the Magistrate is bound to appoint one, and cannot decide the matter by a local enquiry.

Bholanath Ghose v. Mothoor Mundle, 7 C. L. R. 516.

Where a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land, it is a Magistrate's duty to uphold that decree, and he cannot, as between such parties, proceed under section 530 of the Code of Criminal Procedure to decide afresh upon the question of possession.

Roy Mohun Roy *v.* Wise, 16 S. W. R. 24 and Raneegunge Coal Association *v.* Hemlall Ghatwal, 24 S. W. R. 17 followed.

Sheikh Laloo v. Adam Sircar; Government v. Surjakant Acharjia; Dengoo Sheikh Adam Sircar & others, 17 S. W. R. Cr. R. 37.

The purchaser of an interest in land at a sale in execution of decree, obtained an order for possession under section 263 or 264, Act VIII of 1859, and a dispute arose between him and another person who had some interest in the land, as to what passed under the sale certificate. Without ascertaining the rights of the parties, the Magistrate made certain orders, the effect of which was to exclude the auction-purchaser for some time from exercising the right alleged to have passed to him under the purchase. Held, that the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the section to do what was necessary to prevent a breach of the peace. The High Court may interfere with, and quash an order passed by a Magistrate under section 62, Code of Criminal Procedure (Act XXV of 1861), when the order is such that it was beyond the power and out of the jurisdiction of the Magistrate to make it.

Quære:—Whether pleaders have a right to be heard in such cases.

Mokut Sing in re, 6 N. W. P. Rep. All. 16.

An order passed by a Magistrate under section 518 of the Code of Criminal Procedure (Act X of 1872), is not of the nature of a judicial proceeding, and is, therefore, not open to revision by the High Court under section 297.

Kedarnath v. Rughonath & others, 6 N. W. P. Rep. All. 104.

The legality of an order made by a Magistrate under section 62 of Act XXV of 1861, (section 518 of Act X of 1872) can be questioned by a Civil Court.

The Civil Courts are, however, bound to respect an order passed by a Magistrate when he is acting within his jurisdiction, *i. e.*, within the powers conferred on him by law, and if his proceedings show due diligence in satisfying himself of the necessity of the order, they cannot question his discretion. In a suit to establish a right to continue a market, and to hold it on certain fixed days, by cancelment of the order of a Magistrate directing that it should not be held on those days for fear of riot, and of loss to the owner of another market, the plaintiff's right to hold the market on the days named in the plaint, was decreed subject to the prohibition created by the order of the Magistrate.

Elavarisu Vanama Malai Ramanuja Jeeyarsvami v. Vanama Malai Ramanuja Jeeyar, 3 I. L. R. Mad. 354.

Where a dispute arises as to the right to the possession of lands and buildings, a Magistrate, if he considers a collision between the parties and a serious breach of the peace imminent, may properly proceed under Chapter XXXIX instead of Chapter XL of the Criminal Procedure Code (Act X of 1872). If the Magistrate had jurisdiction, the proceedings, not being judicial, cannot be revised by the High Court. An order to abstain from interference with a temple and its property, is an order to abstain from a "certain act" within the meaning of section 518 of the Criminal Procedure Code.

Proceedings of 13th July 1868, 4 Mad. Rep. Rul. 12.

A Magistrate has no ground for proceedings under Chapter XXII of the Criminal Procedure Code, where there is no dispute as to the fact of actual possession of either the land or crop.

Proceedings of 13th Nov. 1868, 4 Mad. Rep. Rul. 20.

The inquiry contemplated by Chapter XXII of the Criminal Procedure Code (Act XXV of 1861), is a personal inquiry before the Magistrate who makes the order.

Proceedings of 4th Jan. 1869, 4 Mad. Rep. Rul. 26.

The jurisdiction given by section 320 of the Code of Criminal Procedure (Act XXV of 1861), to decide for a time the right to enjoyment of property, should not be exercised except on clear and satisfactory proof. Where the only evidence is that of user, it should be such as to show satisfactorily, acts of enjoyment exercised as a matter of right, and permitted uninterruptedly for some considerable length of time.

Proceedings of 15th May 1869, 4 Mad. Rep. Rul. 49.

In order to give a Magistrate jurisdiction to make an order regarding the possession of land under section 318 of the Code of Criminal Procedure (Act XXV of 1861), he must be satisfied that there exists a dispute likely to induce a breach of the peace, and he must regard the grounds of his being so satisfied. It is not sufficient that there is a mere scintilla of evidence, but there must be some evidence from which the Magistrate may reasonably draw the necessary conclusion of fact. The question whether any such evidence existed, is one for the consideration of the High Court.

Proceedings of 28th Nov. 1870, 6 Mad. Rep. Rul. 4.

A Magistrate proceeding under section 318 of the Code of Criminal Procedure (Act XXV of 1861), is bound to examine any witnesses tendered in support of the respective claims to actual possession of the land in dispute before passing an order.

Dastur Husang Jamasji v. Fell, 6 Bom. Rep. Crown Cases, 30.

A Magistrate under section 318 of the Criminal Procedure Code (Act XXV of 1861) is to inquire into the question who is in actual possession of the property in dispute, without considering how that possession has been obtained.

Marriot for the petitioner :—

The Magistrate says "that possession, if once obtained, whether legally or not, cannot be disturbed unless by due course of law. But section 318 of the Code of Criminal Procedure (Act XXV of 1861) does not protect possession obtained illegally, *e. g.*, by force or fraud. Suppose a trespasser to enter into a vacant bungalow, can he be said to be in possession of it. Here the possession obtained was fraudulent and by trespass."

COUCH, C. J. :—In this case, the Magistrate has found that Fell is in actual possession of the property, and that this possession was obtained un-

der the authority of the Dastur, and it does not appear that the power of Attorney which Fell held from the trustees of the mortgagees was ever revoked; but this is immaterial, for section 318 of the Code of Criminal Procedure requires the Magistrate merely to see which party is in actual possession of the property in dispute, since it provides that in cases of disputes relating to the possession of land, premises &c. the Magistrate shall call on all parties concerned in such dispute to attend his Court, and "to give in a written statement of their respective claims, as respects the *fact of actual possession* of the subject of dispute." In another part of the section it is provided that "the Magistrate shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire which party is *in possession* of the subject of dispute," and though the word "actual" does not occur in this part of the section, we must read that part with reference to what precedes it. It cannot be supposed that where the Magistrate is to call upon the parties to give in their statements as respects the fact of actual possession only, he is to go into the question of legal possession, which it is for the Civil Court alone to decide. The object of the interposition of the Magistrate under the section is to prevent a breach of the peace, and with that view he should keep in possession the party which is found to be in actual possession. The Magistrate here has inquired into the fact of actual possession, and has found that Fell was in such possession. The propriety of this finding on the evidence cannot be questioned here, and, as there is no ground for holding that an error in law has been committed by the Magistrate, we must reject the application."

Reg. v, Russul Nushy & others, 2 B. L. R. Ap. 9.

Where A. complained merely to the Magistrate that "a certain road had been obstructed by B. and others." Held, that the Magistrate was not bound to enquire into the matter under section 320 of Act XXV of 1861.

Reg. v. Runjeet Molla, 2 S. W. R. Cr. R. 31.

A Joint-Magistrate cannot award possession, under section 318 of the Code of Criminal Procedure (Act XXV of 1861) without making a formal enquiry.

Reg. v. Sonaoollah, 2 S. W. R. Cr. R. 44.

Taking the statements of both parties without recording evidence in proof of either is not an "enquiry." No enquiry should be made, nor order giving possession to one side or the other passed, under section 318 of the Code of Criminal Procedure (Act XXV of 1861) save on the supposition that the dispute is likely to cause a breach of the peace.

Reg. v. Zemindar of Colgong, 1 S. W. R. Cr. R. 12.

A Magistrate can maintain a chowkidar in possession of his chakeran land, (*i. e.*, land set apart for his subsistence by his zemindar). Any such order of the Magistrate is appealable to the Superintendent of Police. In a miscellaneous case (not a judicial proceeding) the Magistrate is not required to record his final order in English.

Sheeb Chunder Bhuttacharjee v. Saadut Ally Khan, 4 S. W. R. Cr. R. 13.

A Magistrate cannot under section 62, Criminal Procedure Code (Act XXV of 1861) interfere with the civil right of a land-owner to establish *hâts* within his estate, and to hold them on any day most convenient to him.

Maheschandra Mookerjee v. Ramutan Palit & others, 5 B. L. R. App. 68.

The Magistrate had on the complaint of the defendant, passed an order, under section 320 of the Criminal Procedure Code, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public, until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Moonsiff's Court to recover possession of the land. The Moonsiff gave him a decree for exclusive possession of the land. On appeal, the Judge held that the Moonsiff had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed in special appeal, and the case remanded to the Judge to try the issue, whether the plaintiff was entitled to the exclusive use of the land. (Rooke *v.* Pyari Lall, 3 B. L. R. App. 43) distinguished.

Shoindoo Noshyo v. Runglal Jhah & others, 25 S. W. R. Cr. R. 21.

An order of a Magistrate retaining parties in possession of land can only be passed after due judicial enquiry, as required by the Code of Criminal Procedure (Act X of 1872), section 530, A Joint Sessions Judge has no power to act in such cases under section 295 which applies only to the Sessions Judge of the Division.

Chunder Nath Sen & another in re, 2 I. L. R. Calc. F. B. 293.

The High Court cannot interfere under section 15 of the Charter Act, with orders duly passed by a Magistrate under section 518 of the Criminal Procedure Code (Act X of 1872).

Gopimohun Mullick v. Taramoni Chowdhrani, 5 I. L. R. Calc. ; S. C. 4 C. L. R. 309 F. B.

A Magistrate is not empowered to pass an order under section 518 of X of 1872, which has more than a temporary operation; the grant of what is in effect an order for a perpetual injunction is entirely beyond his powers. When a plaintiff alleged that he had held a haut on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival haut on these days and prevented persons from attending the plaintiff's haut; that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his haut on the said days, and that the plaintiff suffered loss and damage in consequence. Held, that assuming these facts to be true, the plaintiff was entitled to a decree, declaring as against the defendant, that the plaintiff had a right to hold his haut on Tuesdays and Fridays.

Bapuji Jagjivan v. Magistrate of Kheda, 4 Bom. Rep. App. Civ. 153.

Held that proceedings under section 318 of the Criminal Procedure Code (Act XXV of 1861), are judicial proceedings within the meaning of section 404 of that Act, and that therefore the High Court has power to interfere with an order passed by a Magistrate under such section. Under section 318 a Magistrate is bound to inquire who is in actual possession, without regard to the question of who is legally entitled to possession of the premises in dispute.

Lalji Ukheda v. Jowba Dowba & another, 8 Bom. Rep. Civ. 94.

The concluding clause of section 311 of the Code of Criminal Procedure (Act XXV of 1861) though it prevents the Civil Courts from entertaining a suit to restrain a Magistrate from carrying out an order made under section 308, or a suit for damages against the Magistrate, or any other person in carrying out such order in the manner provided by law, does not bar a person against whom such an order has been carried into effect, from instituting a suit to prove that land declared by the Magistrate to be public, is his private property.

Govt. v. Gholam Mahomed, 1 N. W. P. Rep. (Agra) 33.

Held, that the object of Chapter XXII of Act XXV of 1861 is to preserve the peace, and that the Magistrate's duty is to maintain the party found to be in possession without reference to merits.

Reg. v. Omirtonath Jha & another, 1 Ind. Jur. N. S. 399.

Under Act XXV of 1861, section 318, the Magistrate, if satisfied that a dispute concerning land is likely to result in a breach of the peace, shall record a "proceeding" stating the grounds of his being so satisfied. This "proceeding" should show on the face of it, that there are reasonable grounds for apprehending a breach of the peace.

Under this section the question of title is excluded, and the Magistrate is equally prohibited from grounding a *primâ facie* case of possession on the title shown in evidence by either party. He should confine himself to ascertain what was the subject of the dispute, and the question of the possession.

Azim Mollah v. Satoo Poramanick & others, 10 C. L. R. 523.

A dispute having arisen as to the possession of 109 plots of land to which a claim to possession was made by the ryots of village A. on the one hand, and by the ryots of village B. on the other, the Magistrate instituted a proceeding under section 530 of the Criminal Procedure Code, (Act X of 1872), in respect of all the 109 plots, but having taken evidence dealt in his order with 12 only, directing that the ryots of village B. should be kept in possession. Held, that it appearing that all the 109 plots were covered by the same state of circumstances, the Magistrate had exercised a sound discretion in acting as he did.

Issurchunder Nath & Kalichurn Nath & another in re, 11 C. L. R. 235.

Where a Magistrate considers that there is no sufficient reason for proceeding under section 521 of the Code of Criminal Procedure (Act X of 1872), he may let the matter drop and the High Court will not as a Court of Revision, interfere with his action.

In the matter of Sonai Paramanick, 1 C. L. R. 486 followed.

Deo Sarun Singh v. Tulsi Kant & others, 12 C. L. R. 221.

Sufficiency of evidence to justify proceedings under section 531 of the Criminal Procedure Code, Act X of 1872 considered.

Proceedings of 11th Feb. 1873. Weir, 436.

A dispute between a zemindar and his lessee as to the right to receive rent, is not a dispute as to the possession of lands within the meaning of section 530.

Proceedings of 9th August, 1870. Weir, 436.

The omission to record a preliminary proceeding to the effect, that a dispute likely to induce a breach of the peace exists, will not invalidate an order under Chapter XL, unless it can be shown that the party was prejudiced by the omission.

Chockalingam v. Ammalachi. Weir, 437.

Section 530 requires the Magistrate to ascertain who, at the time of the enquiry, is in possession. This enquiry he is to make without reference to the merits of the claim of any party to a right of possession. Section 534 is the only provision which enables a Magistrate to restore a dispossessed party, and the power can only be exercised in cases in which there has been a conviction of an offence attended by criminal force and dispossession has been effected by means of such criminal force.

The ruling in H. C. Proceedings, 9th January 1871 (6 M. H. C. Rep. App. 13.) overruled.

roceedings of 15th ov. 1880. Weir, 438.

The above ruling followed :—For the purposes of Chapter XL, a temple may or may not be in the possession of certain classes of persons to the exclusion of others.

Proceedings of 11th Nov. 1874. Weir, 440.

The jurisdiction of a Magistrate to make an order under section 532 does not arise, unless it appears that the subject in dispute is open to the use of the public, the right having been exercised within three months from the date of the enquiry.

Mahomed Cawther Pillai & others, accused. Weir, 445.

Section 534 does not empower a Magistrate other than a District Divisional or 1st class Magistrate, to pass orders adjudicating on claims of disputed possession.

Obhoychandra Mookerjee v. Mohamed Sabir, 10 I. L. R. Calc. 78; S. C. 13 C. L. R. 410.

It is the duty of a Magistrate, before taking proceedings under section 145 of the Criminal Procedure Code, (Act X of 1882) to satisfy himself whether there is any dispute likely to cause a breach of the peace, and that the suggested apprehension of a breach of the peace is not merely colourable, and made to induce him to deal with matters properly cognizable by the Civil Court.

Beni Narain v. Achraj Nath, 5 I. L R. All. 607.

A dispute existing between one of the co-sharers of an undivided estate, and the lessee of another co-sharer, as to the right of the latter to collect rent, such right being denied on the ground that the lessor was not in possession of her share, an inquiry was made under Chapter XII of the Criminal Procedure Code (Act X of 1882) and the lessor was declared to be in possession of her share. *Held*, that the provisions of that Chapter were not applicable to the dispute in question.

EJECTMENT.

Durjan Mahton v. Wajid Hossein & others, 5 I. L. R. Calc. 135.

The effect of an order of ejectment under section 53 of the Rent Act (Bengal Act VIII of 1869) is to dispossess the ryots, not only of the land, but also of the crop standing thereon, the object of such an ejectment being, to terminate completely the connection between the parties as landlord and tenant.

EUROPEAN BRITISH SUBJECT.

Joseph Parks, prisoner, 10 S. W. R. Cr. R. 6.

Whether or not an accused is an European British subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question.

Empress v. Allen & others, Quiros & another in re, 6 I. L. R. Calc. 83; S. C. 6 C. L. R. 463.

Section 84 of the Criminal Procedure Code (Act X of 1872) must be construed strictly with section 72, and before a European British subject can be considered to have waived the privilege conferred upon him by section 72, it must appear that his rights under that section have been distinctly made known to him, and that he must have been enabled to exercise his choice and judgment, whether he would or would not claim those rights. The provisions of section 72 of the Code of Criminal Procedure, relating to the kind of Court which shall have jurisdiction, and shall not have jurisdiction, to enquire into a complaint or try a charge against a European British subject, constitute a privilege—that is to say, they are not so much words taking away jurisdiction entirely, as words which confer on the British subject a right to be tried by a certain class of Magistrates and by no others, which right the Code enables him to give up. No

person can by waiver or consent enable a Magistrate or a Judge to try a case which he is dis-qualified to try by some circumstance not personal to the accused. Reg. *v.* Bholanath Sen (2 I. L. R. Calc. 23) distinguished.

The waiver of privilege spoken of in section 84 must be an absolute giving up of all the rights, with reference to Chapter VII of the Code of Criminal Procedure, which a European British subject has; and the words "dealt with as such before the Magistrate" mean everything contained in the chapter,—that is to say, the tribunal having cognizance of the case; the procedure, and also the punishment to which the accused would be liable.

Empress v. Berrill, 4 I. L. R. All. 141.

B. who was charged before a Magistrate, who was competent to inquire into a complaint against a European British subject, with an offence triable by him, claimed to be dealt with as a European British subject. B. did not state the grounds of such claim. The Magistrate did not decide whether B. was or was not a European British subject, but proceeded with the case, dealing with him as if he were not a European British subject, and sentencing him to rigorous imprisonment for one year and to a fine. On appeal by B. the High Court remanded the case to the Magistrate in order that he might decide in the manner directed by section 83 of the Criminal Procedure Code (Act X of 1872) whether B. was or was not a European British subject.

The Magistrate having decided that B. was a European British subject, held that, this being so, and it appearing that the Magistrate had dealt with B. as other than a European British subject, B.'s trial was void for want of jurisdiction. Also that the Magistrate having tried the case without jurisdiction, the High Court could not proceed with B.'s appeal on the merits, with a view, in the event of its deciding that the offence of which B. was charged had been established, to the reduction of the sentence passed upon him by the Magistrate, to one which he was competent to pass under section 74 of the Criminal Procedure Code.

EXAMINATION OF ACCUSED.

Reg. v. Bissessur Sein, 9 S. W. R. Cr. R. 62.

A Deputy Magistrate is bound to examine the accused under section 266 of the Code of Criminal Procedure (Act XXV of 1861) in answer to the charge brought against him.

Reg. v. Petumber Dhobee, 14 S. W. R. Cr. R. 10.

Where a statement made by a prisoner before a Magistrate though signed by the Magistrats does not contain the certificate directed by section 205 of the Code of Criminal Procedure (Act XXV of 1861) it does not of itself contribute *primâ facie* evidence of the examination within the meaning of section 366 of that Code; and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the Sessions.

Reg. v. Mussamut Niruni, & Monirud-deen, 7 S. W. R. Cr. R. 49.

Before criminating a man upon his own statement under examination, it is necessary to see that such statement has been deliberately made and recorded; that, after being recorded, it has been shown or read to the accused; and that the examination has been attested by the signature of the Magistrate following a certificate to be given under his own hand.

Mohima Chunder Chuckerbutty in re, 12 S. W. R. Cr. R. 77.

A Magistrate holding a preliminary investigation under Chapter XII of the Code of Criminal Procedure (Act XXV of 1861), and a Magistrate holding a trial of an offence within his jurisdiction and the XIVth Chapter of the Code, has power under sections 202 and 250 to put questions to the accused, and to examine him as he may consider necessary, and the Court of Session has similar power in regard to persons on trial before that Court, but the Procedure Code makes no such provisions in respect of parties under trial under the XVth Chapter.

Dinoo Roy & others, Case of, 16 S. W. R. Cr. R. 21.

The discretion of a Magistrate under section 202, Code of Criminal Procedure (Act XXV of 1861), to ask questions of an accused is entirely unfettered, though an examination under that section should not be of an inquisitorial nature, and a Magistrate should inform the accused that he is not bound to answer. Answers to questions under that section are admissible in evidence, even if the Magistrate has omitted to warn the accused he need not answer.

Dila Mundul & others v. Kally Shaha & others, 16 S. W. R. Cr. R. 53

When a written defence is tendered in a case tried under Chapter XV of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate is not bound to take down the defence of the accused by personally examining him.

Reg. v. Lucky Narain Dutt, S. W. R. Cr. R. 50.

In recording the examination of accused persons under section 346 of the Code of Criminal Procedure (Act X of 1872) in the language in which they are given, a Magistrate need not take down the examination in his own hand; it is enough that he append a certificate that the examination was conducted in his presence, and contains accurately all that was stated by the accused person.

Reg. v. Moonsai Bibee, 24 S. W. R. Cr. R. 54.

The examination of an accused person should be taken down in the language in which it is delivered, and as far as possible in the words used by him.

Hossein Buksh & others v. The Empress, 6 I. L. R. Calc. 96; S. C. 6 C. L. R. 521.

The authority given to a Sessions Court to examine an accused, does not contemplate the cross-examination of such accused, nor can the Judge endeavour, by a series of searching questions, to force the accused to criminate himself. The real object involved in the power given to the Court under section 250 of the

Code of Criminal Procedure (Act X of 1872) is to enable the Judge to ascertain from time to time from the accused (especially if he be undefended) such explanation as he may desire to give, regarding any statement made by the witnesses, or, at the close of the case for the prosecution, to elicit from the accused, how he proposes to meet such portions of the evidence which, in the opinion of the Court, implicates the accused in the commission of the offence with which he stands charged.

Chinibash Ghose in re, 1 C. L. R. 436.

Under section 250 of the Code of Criminal Procedure (Act X of 1872) the Court may from time to time, at any stage of the case, examine the accused personally; but the Court is not competent to subject the accused to severe cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself; but only for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that these facts should not stand against him unexplained. Virabudra Gaud, 1 Mad. 199 quoted and followed.

Empress v. Beharilall Bose, 6 C. L. R. 431.

It is improper for the Court to cross-examine a prisoner with the apparent object of convicting him out of his own mouth of false statements, and so making him prejudice himself in respect of the matter with which he is charged.

Proceedings of 11th Nov. 1869, 5 Mad. Rep. Rul. 4.

If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Session Court, the whole of it should be read out.

Reg. v. Timmi, 2 Bom. Rep. 125.

The examination of the accused by the Magistrate, not having been recorded in accordance with the provisions of section 205 of the Code of Criminal Procedure (Act XXV of 1861) was not admissible in evidence at the trial before the Court of Session under section 366; and the evidence being in the opinion of the High Court, insufficient to support the conviction, the prisoner was acquitted under section 399. It is improper to allow witnesses for the prosecution to state that the accused is not of good character.

Reg. v. Kalla Lakhmaji, 2 Bom. Rep. 395.

1. When the examination of the prisoner by the Magistrate has not been recorded in full, so as to include the questions, as required by section 205 of the Code of Criminal Procedure (Act XXV of 1861) it cannot be given in evidence at the trial before the Court of Session, under section 366 without further proof.

2. When the examination would, either alone or with other evidence, be sufficient for the conviction of the accused, the proper course is to remand the case to the Court of Session, in order that proof may be taken of the examination.

3. When the evidence, exclusive of the inadmissible examination, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case, and the admission of such an examination by

the Court of Session does not invalidate the trial and conviction under sections 426 and 439 of the Code.

Reg. *v.* Timmi (2 Bom, Rep. 125) observed upon.

Hurry Churn Chuckerbutty v. The Empress, 10 I. L. R. Calc. 140; S. C. 13, C. L. R. 358.

It is improper on the part of a Judge when examining a prisoner under section 342 of the Criminal Procedure Code (Act X of 1882) to cross-examine him. The only questions which are permissible, are such as will enable the prisoner to explain any circumstances appearing in evidence against him.

Virabudra Gaud Exparte, 1 Mad. Rep. A. C. 199.

The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, and not to drive him to make self-criminating statements.

FINES.

Reg. v. Bissessur Sein, 9 S. W. R. Cr. R. 62.

Under section 15, Act XXIX of 1867 the fine to be imposed for non-payment of the tax, cannot be less than the amount stated in the notice.

Reg. v. Brojokishore Dutt, 8 S. W. R. Cr. R. 17.

A Deputy Magistrate has no authority to order arrears of Municipal tax due by a person to be paid out of a fine levied on him. Where a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of Municipal tax, convicted him of an offence under section 424 of the Penal Code, the conviction was set aside.

Reg. v. Jungli Beldar, 8 B. L. R. Ap. 47; S. C. 17 S. W. R. Cr. R. 7.

The provisions of section 61 of the Criminal Procedure Code (Act XXV of 1861 and Act VIII of 1869) do not apply to fines imposed under Act XXI of 1856; such fines cannot be levied by distress and sale of the offender's property.

Reg. v. Kartick Chunder Holdar, 9 S. W. R. Cr. R. 58.

An order directing the payment to a witness of a portion of the amount of fine levied on an accused, held to be illegal in the absence of proof that the witness suffered any loss owing to the conduct of the accused.

Reg. v. Modoosoodun Dey, 3 S. W. R. Cr. R. 61.

Held by the majority of the Court that an offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him, which may be found within the jurisdiction of the Magistrate of the district, whether the officer who inflicted the fine issued any special directions on the subject or not.

(SETON-KARR, J. dissenting.)

Reg. v. Moorutlall & others, 6 S. W. R. Cr. R. 93.

The Joint-Magistrate was held not competent to direct, under section 44 of the Code of Criminal Procedure (Act XXV of 1861), that a portion of a fine inflicted under section 434 of the Penal Code, be paid to an Ameen for the purpose of paying the expense of his deputation to restore the landmarks which had been destroyed by the opposite party.

Reg. v. Nodiar Chand Koondoo & another, 14 S. W. R. Cr. R. 70.

A Magistrate has no power under section 25, Act IX of 1869 to sentence to imprisonment in default of the payment of fine imposed for not paying income tax.

Reg. v. Poresh Naryan Roy & others, 2 S. W. R. Cr. R. 58.

An order of fine quashed as made without the answer of the parties fined being taken to the offence charged.

Reg. v. Ramdyal Singh, 8 B. L. R. Ap. 7; S. C. 16 S. W. R. Cr. R. 55.

Upon the conviction of certain persons under section 20, Act XIII of 1867, for illicit possession of opium, the Magistrate sentenced them to payment of a fine, and directed that upon the realization thereof one-half should be paid to the Inspector of Police who had apprehended the prisoners, but refused to pay the other half in accordance with section 30 (for reasons set forth in his order) to the person who gave the information. On a reference by the Sessions Judge to the High Court. Held, the High Court could not interfere under section 404 of the Code of Criminal Procedure (Act XXV of 1861). The distribution of the fine under section 30, Act XIII of 1867, forms no part of the Magistrate's judgment.

Reg. v. Ram Gobind Chuckerbutty, 2 B. L. R. Ap. 40; S. C. 11 S. W. R. Cr. R. 13.

The fine imposed under section 17 of Act IX of 1868 for neglect to take out a certificate, must not be less than twice the amount for which such certificate should be taken out.

Rev. v. Suroop Chundra Dutt, 7 S. W. R. Cr. R. 29.

A Magistrate may impose a fine exceeding Rs. 1000 under the Excise Act XXI of 1856; section 22 of the Code of Criminal Procedure (Act XXV 1861) notwithstanding.

Sagur Dutt in re, Reg. v. The Justices of the Peace, 1 B. L. R. O. Cr. 41.

Sagur Dutt was convicted before a Justice of the Peace for using a ware-house &c. in the Town of Calcutta for the keeping and storing of jute, other than screwed for shipment, without a license, and for his said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction in which the offence was continued. Held, that the conviction was bad.

Reference by Sessions Judge of 24-Pergunnahs under section 434 of Act XXV of 1861 & Circular Order No. 18, dated 15th July 1863 3 S. W. R. Cr. R. 33.

A Joint-Magistrate, though the Chairman of a Municipal Committee, can impose fines under Act IV of 1864 B. C.

The Joint-Magistrate should make a record of his proceedings before passing sentence.

The obstruction of a drain by a tree blown down by a cyclone, is not an obstruction within the meaning of section 57 of that Act. The owner of ground is answerable under section 67, whether his ground was made dirty by himself or another.

Gour Surun Doss, petitioner, 8 S. W. R. Cr. R. 83.

The order of a Sessions Judge under section 354 of the Code of Criminal Procedure (Act XXV of 1861) fining an Assessor, is not appealable nor liable to be interfered with by the High Ccurt, under section 404 of the Code.

Abdoor Ruhman, petitioner, 7 S. W. R. Cr. R. 37.

The description of fine which it was the object of section 63 of Act XXV of 1861 to prohibit, was a fine which it would be impossible, or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence.

Quœre :—Whether section 63 has any application to fines inflicted by a Magistrate.

Chunder Coomar Mitter v. Modhoosoodun Dey, 9 S. W. R. Cr. R. 50 F. B.

In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate, may levy a fine imposed by his predecessor. But the Court which levies the fine, must be the same as the Court which imposed it.

Doorgachurn Giree, 9 S. W. R. Cr. R. 64.

Under section 3, Act XXIX of 1867, a person once fined for not taking out a license, is not liable to a second fine, or to any further demand for the tax.

Hothoor Laloong v. Hindoo Singh Mouz & another, 10 S. W. R. Cr. R. 49.

Held, that where a Magistrate is dealing with a charge which he has the power to dispose of finally under Chapter XV of the Code of Criminal Procedure (Act XXV of 1861), although the charge, as originally laid, fell under Chapter XIV, he has a discretion to inflict a fine under section 270 of that Code.

Mothoor Ghose & others, case of, 11 S. W. R. Cr. R. 10.

The High Court refused to interfere with the order of a Magistrate, fining complainants under section 270 of the Code of Criminal Procedure (Act XXV of 1861), when it appeared, after due enquiry by the Magistrate, that the complainant had laid claim to large jummas in a chur without possessing any documents to prove their rights.

Bani Madhub Banerjee, petitioner, 14 S. W. R. Cr. R. 23.

The Municipal authorities have no power under section 57, Act III of 1864, Bengal Council, to impose a fine on a person for blocking up a drain, which is not shewn to be public property or along the side of any highway.

Sajjewan Mahatoo in re, 18 S. W. R. Cr. R. 9.

According to section 3, Act XXIII of 1860, a fine of Rs. 180 cannot be commuted to imprisonment for a longer term than four months.

Reg. v. Shadu Churn Ghose, 23 S. W. R. Cr. R. 63.

No order fining a party for not repairing a fence ought to be passed without an information against him and a hearing.

Kristodhone Dutt v. Chairman of the Municipal Commissioners of the Suburbs of Calcutta, 25 S. W. R. Cr. R. 6.

In accordance with previous rulings to the effect that a conviction which is in fact an adjudication in respect of an offence which has not been committed, is bad, it was held, that the imposition of a daily fine in case the accused should not remove an obstruction, in addition to a substantive fine for making the obstruction, was illegal. The High Court has power, under section 297 Criminal Procedure Code to interfere in such a case as the above, and to annul what is illegal whilst passing a legal sentence.

Love W. N. in re, 9 B. L. R. App. 35.

The following reference was made by the officiating Sessions Judge of Hooghly.

"The petitioner W. N. Love has been convicted under section 18 of the Howrah Municipal Bye-laws (1) and fined Re. 1 for infringement thereof, as well as ordered to pay a daily fine of Rs. 2. (I presume until he complies with the Bye-law.) An order of this description has been held, not only to be contrary to law, but to vitiate the entire conviction. In re Sagar Dutt (1 B. L. R. O. Cr. 41); and following that rule I feel bound on the petitioner's application to submit the proceedings under section 434 of the Code of Criminal Procedure to have that order set aside."

MITTER, J.:—"We think that the daily fine of Rs. 2 was illegal, and ought to be set aside. But under the circumstances of this case, we do not think it necessary to exercise our special powers of discretion by setting aside the fine of Re. 1 which was inflicted upon the prisoner for an offence actually committed. The conviction on that offence is not bad in law, and

we do not see any reason for exercising our extraordinary powers by setting aside that conviction.

Municipal Commissioners for the Suburbs of Calcutta v. Aneesuddin, 12 B. L. R. App. 2.

The defendant was, on the 18th July 1873 convicted before a Bench of Magistrates for infringing the provisions of section 66 Bengal Act III of 1864, in that he had kept on his land some bones more than twenty four hours, otherwise than in a proper receptacle. The Bench found him guilty, and sentenced him to pay a fine of Rs. 10 and further ordered him to remove the bones in three days, or in default to pay a fine of Rs. 2 for every day the nuisance continued unabated. JACKSON, J.:—We think it proper to follow the precedent in the case of In re W. N. Love, (9 B. L. R. App. 35). In the case of In re Sagor Dutt (1 B. L. R. O. Cr. 41) the Court had before it a conviction before the Justices, regulated by the English law, and which "could not be amended." We set aside so much of the order before us as inflicts a fine prospectively of "Rs. 2 for every day the nuisance remains."

Reg. v. Hadjee Jeebun Bux, 1 I. L. R. Calc. 354.

The High Court has no power under section 147, Act X of 1875 (High Court Criminal Procedure Act) to order a fine to be refunded on quashing a conviction.

The Court in this instance decided whether the case should be transferred under section 147 on the notes of the evidence taken by the Magistrate at the trial.

Mohesh Mundul v. Bholanath Mundul, 3 C. L. R. 404.

The proper course of procedure under section 308 of the Code of Criminal Procedure (Act X of 1872) is to impose a fine, and out of the fine realized to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section. A Court of Session acting under section 296 of the Code of Criminal Procedure has no power to admit a convicted person to bail.

Kanhai Sahus case (23 W. R. Cr. 40) cited and followed.

Proceedings of, 7th Decr., 1866. 3. Mad. Rep. Appendix 9.

Persons convicted under section 48 of the Police Act (XXIV of 1859) are not liable to both fine and imprisonment in default of payment. The procedure to be followed in enforcing the fine is that laid down in Madras Act V of 1865.

Proceedings of 16th Jany., 1869, 4 Mad. Rep. Rul. 28.

A Magistrate has no power to seize the property of a person convicted by him, when the person convicted has not been directed to pay a fine. Nor has a Magistrate power to take property from one defendant and give it to another defendant.

Proceedings of, 26th July, 1870, 5 Mad. Rep. Rul. 33.

A village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the village Magistrate in the course of a trial under section 10, Regulation XI of 1816.

Proceedings of, 20th Novr., 1871, 6 Mad. Rep. Rul. 40.

Prisoners were sentenced to fines under sections 21 and 22 of Madras Act III of 1864 and in default of payment of fine to rigorous imprisonment. Held, that as fine in these cases was the only assignable punishment, and by sections 30, 31 and 32 a specified procedure is laid down for the levy of the penalty, section 64 of the Penal Code had no application.

Proceedings of, 3rd Decr., 1872, 7 Mad. Rep. Rul. 13.

The accused were convicted of theft of some bullocks and fined. Under section 44 of the Criminal Procedure Code (Act XXV of 1861), the Magistrate directed that the fines, if collected, should be paid to the 6th witness as compensation for having to return the bullocks which he had purchased, to the complainant. Held, that this order was bad. The sale to the 6th witness was not "the offence complained of" within the meaning of section 44.

Proceedings of 1st Aug., 1873, 7 Mad. Rep. Rul. 24.

Section XXII of Act I of 1871 does not provide for a fine in addition to compensation.

Reg. v. Rama bin Rabhaji, 1 Bom. Rep. 34.

A prisoner convicted under the second clause of section 211 of the Indian Penal Code should be sentenced to imprisonment, with or without fine and not to fine alone.

Reg. v. Bahirji bin Krishnaji, 1 Bom. Rep. 39.

Fine alone is not a legal sentence for a prisoner convicted under section 344 of the Indian Penal Code.

Reg. v. Natha Mula 4, Bom. Rep. Crown Cases 37.

A prisoner was sentenced to imprisonment and fine, and in default of payment of the latter, to a further term of imprisonment. He paid a portion of the fine, but that fact not having been communicated to the jailor, underwent the entire further term of imprisonment. Held that, under these circumstances, the Court had no power to order the fine to be refunded.

Reg. v. Lallu, Karwar, 5 Bom. Rep. Crown Cases 63.

On a reference as to whether the restriction for the recovery of fines to moveable property Criminal Procedure Code (Act XXV of 1861, section 61) applied only during the lifetime of the offender, and whether the fine could after his death be recovered, under section 70 of the Indian Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of moveable property, and that there was no way in which immoveable property could be made liable.

Reg. v. Durgaram Madhavram, 7 Bom. Rep. Crown Cases 55.

A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under Act XXVI of 1850 because be has paid a fine under section 6 of Act III of 1857.

Proceedings of, 16th Feby., 1876 Weir 328.

The mode of levying pecuniary penalties must be strictly confined to the provisions of the law that gives the jurisdiction. Section 307 (Act X of 1872) directs that the warrant for the levy of fine shall authorize the distress and sale of any moveable property belonging to the offender. This language denotes things which may be taken by distress and then sold, so as by the mere act of sale to pass the property in them. It does not apply to mere rights and interests in joint moveables, such as the rights and interests of members of an undivided Hindu family.

Proceedings of 7th Dec., 1866 & 24th April 1873. Weir, 14.

The provisions of section 64 of the Penal Code do not apply to a sentence of fine imposed under section 48 of the Police Act (XXIV of 1859).

Proceedings of 5th April, 1870. Weir 14.

Section 64 of the Penal Code, read with section 45 (309) of the Code of Criminal Procedure, does not render it imperative to record a sentence of imprisonment in default of payment of fine.

Proceedings of 19th Nov. 1878. Weir, 329.

Growing crops are not moveable property within the meaning of section 307. (Act X of 1872.)

Proceedings of 28th July, 1879. Weir 330.

Section 307 does not authorize the levy in a Foreign State, of a fine adjudged by a British Indian Court.

Proceedings of 15th Sept., 1881. Weir, 330.

In cases in which there is a dispute as to the ownership of property distrained under this section (307), it is inadmissible to order a sale until the claimants have been allowed the opportunity of establishing their title in a Civil Court.

Proceedings of 3rd Feby., 1880. Weir, 333.

Compensation cannot be awarded where no substantive sentence of of fine has been passed.

Tammisetti Ramaswamigadu accused. Weir, 333.

The ruling in H. C. Proc. 3rd Decr. 1872 (VII M. H. C. Rep. App. XIII) followed.

Proceedings of 25th March, 1879 Weir, 334.

Where a portion of a fine had been awarded and paid as compensation to the complainant, and the High Court subsequently ordered the refund of the fine, it was held, that if the complainant refused to refund, the only remedy open to the person who had paid the money and was entitled to its refund lay in a Civil Court.

Proceedings of 18th May, 1881. Weir, 335.

The words in the 3rd clause of section 309 (Act X of 1872), "allowed by law," mean allowed by the particular section applicable to the offence and section 65 of the Penal Code taken together. The ruling in H. C. Proc. 4th September 1877 overruled.

Narayna & Mulayil Appellants. Weir, 340.

A direction that a sentence of imprisonment in default of payment of fine, shall take place after the expiry of a sentence of imprisonment in default of payment of fine, in another case, is illegal, the imprisonment in default of payment of fine, must immediately follow the substantive sentence of imprisonment awarded for the offence.

Proceedings of 25th July, 1879. Weir, 473.

Under Act I of 1866 (Madras) section 19, clause XI a Cantonment Magistrate cannot, in anticipation of default of payment of fine, adjudge imprisonment as an alternative punishment for such fine.

Proceedings of 24th June, 1881. Weir, 541.

Where, in an Act passed subsequently to the General Clause's Act, I of 1868, a sentence of fine is the only punishment provided for an offence, (*e. g.* section 32 of the Railway Act, IV of 1879) section 6 of the General Clause's Act, which extends the provisions of sections 68 to 70 of the Indian Penal Code, to all fines imposed under the authority of any Act thereafter to be passed, does not operate to authorize a sentence of rigorous imprisonment in default of payment of fine.

But see now section 67, Act VIII of 1882.

Reg. v. Goluck Doss, 1 Hydes Rep. 282.

The Court has no power to dispose of fines inflicted upon prisoners. Such power exists in Government alone.

Proceedings of 24th April 1873, 7 Mad. Rep. Rul. 22.

Accused was convicted under section 48 of Act XXIV of 1859, and sentenced to pay a fine or in default, to be imprisoned. Held, on the authority of the Proceedings of 7th December 1866, that the award of imprisonment in default of payment of fine was irregular. The Rulings reported at 5 M. H. C. R. App. XXI and XXIII overruled.

FORFEITURE.

Reg. v. Gugun Misser, 8 S. W. R. Cr. R. 61.

An order of forfeiture under section 184, Code of Criminal Procedure (Act XXV of 1861), if substantially legal, cannot be disturbed for an immaterial error of procedure.

Reg. v. Kripamoyee Chassanee & others, 8 S. W. R. Cr. R. 35.

Section 62 of the Penal Code, which provides for forfeitures, limits them to cases when the parties shall have been transported or sentenced to imprisonment for at least seven years.

Reg. v. Muddun Mohun Podar, 3 S. W. R. Cr. R. 34.

Before a Magistrate proceeds to declare attached property forfeited he should take evidence to prove compliance with the formalities laid down by law with regard to proclamation.

Bissonath Sircar, petitioner, 3 S. W. R. Cr. R. 63.

Forfeiture of property of an absconding offender, who appears within 2 years from the attachment, should not be carried into effect until after a regular enquiry into the causes of the offender's absence.

Greeschunder Doss, Applicant, 17 S. W. R. Cr. R. 38.

A Magistrate may lease land attached under section 319, Code of Criminal Procedure (Act XXV of 1861).

Mussamut Golab Koonwar & others v. The Collector of Benares, 7 S. W. R. P. C. 47.

Where a forfeiture under Regulation XI of 1796 was declared against three or four brothers, constituting a joint undivided Hindu family. Held, that the forfeiture did not enure for the benefit of the fourth brother, nor did it affect rights of the fourth brother, who was entitled to his fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance.

Ganeslal v. Amir Khan, 8 B. L. R. 83, S. C. 17 S. W. R. Civil Rul. 80.

In execution of a decree against the defendant, the plaintiff on 17th July 1871 attached certain property in Calcutta belonging to the defendant. On the 26th July 1871, the defendant was convicted under section I of Act XI of 1857, and also under section 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life, and forfeiture of all his property. The offence for which he was convicted, was committed in September 1861. Held, that the forfeiture took effect from the date of the commission of the offence, and therefore any attachment subsequently made was invalid.

The words in section 3, Act XXV of 1857, "such an offence as aforesaid" refer to the offences mentioned in section 2 as well as to the offence of mutiny mentioned in section 1.

FURTHER ENQUIRY.

No order affecting an accused in a criminal matter, should be made without giving him notice, so as to enable him to appear and show cause against it.

Chundi Churn Bhattacharjea & another v. Hemchunder Banerjea, 10 I. L. R. Calc. 207.

A Sessions Judge has no power under section 437 of the Criminal Procedure Code, (Act X of 1882), to direct a particular Magistrate by name to make the further enquiry contemplated by that section.

The further enquiry contemplated by section 437 of the Criminal Procedure Code, is an enquiry upon further materials, not a re-hearing of the matter upon the same evidence which was before the Magistrate who held the first enquiry.

The words "inferior Criminal Court" in section 435 of the Criminal Procedure Code mean, inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction.

Nobin Kristo Mookerjee v. Russick Lall Laha, 10 I. L. R. Calc. 268.

A criminal charge instituted before a Magistrate of the first class, was finally disposed of by him by an order discharging the accused. Subsequently the Magistrate of the district proceeding under section 437 of the Code of Criminal Procedure directed a further enquiry to be made by a Subordinate Magistrate. This order was made without notice to the accused.

Held, that the Magistrate of the district had no jurisdiction to direct a further enquiry.

Semble, that as a matter of strict law, the accused was not entitled to be heard by the District Magistrate, before granting the order directing the enquiry.

A criminal charge under section 448 of the Indian Penal Code having been instituted, the accused was sent up by the Police before a Deputy Magistrate of the first class. Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled, and that he did not wish to proceed further in the matter, upon which the Magistrate recorded an order, "Compromised; defendant acquitted." Subsequently the Magistrate of the District, relying upon sections 248 and 259 (Act X of 1882) and professing to act under section 437 of the Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case. Held, that sections 248 and 259 had no bearing on the case, and that the mere fact of the accused having been sent up by the Police did not prevent the offence, which

Queen Empress v. Nowab Jan, 10 I. L. R. Calc. 551.

was legally compoundable, from being compromised, and that consequently the order of the Deputy Magistrate was perfectly correct and legal. Held, further, that in addition to the Magistrate's order not being warranted by the fact, it was *ultra vires*, in as much as the Deputy Magistrate was a Magistrate of the first class and not "inferior" to the District Magistrate, and to give the District Magistrate jurisdiction to call for a record under section 435 from another Magistrate, and to act under section 437, the latter must be inferior. Nobin Kristo Mookerjee *v.* Russick Lall Laha (I. L. R. 10 Calc. 268) followed.

INFORMATION TO POLICE.

Empress v. Achiraj Lall & another, 4 I. L. R. Calc. 603; S. C. 3 C. L. R. 87.

Per MARKBY, J. :—A khazanchi is not an "Agent" within the meaning of section 90 of the Criminal Procedure Code (Act X of 1872). A dewan may be an "Agent" if his master is absent, but the provisions of section 90 do not apply to a dewan who is acting only under the orders of his resident master. *Per* PRINSEP, J. *Quære*—Whether according to section 90 an agent is only responsible for giving information of the occurrence of any sudden or unnatural death.

INSANITY.

Reg. v. Arzao Bibee, 2 S. W. R. Cr. R. 33.

The prisoner was convicted of murder, and sentenced to death; but before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge, with instructions for further enquiry.

Reg. v. Mustafa, 1 S. W. R. Cr. R. 19.

The absence of all motive for a crime, when corroborated by independent evidence of the prisoner's previous insanity is not without weight.

Reg. v. Dataram, 6 S. W. R. Cr. R. 54.

Where an accused person was found after examination to be of unsound mind. Held, that the Magistrate should not have proceeded to acquit the prisoner, and directed him to be kept in custody, but should have stayed further proceedings.

Reg. v. Kalai Sheikh, 3 S. W. R. Cr. R. 57.

A prisoner who is insane and unaccountable for his actions, and therefore incapable of making his defence, instead of being tried, should be dealt with according to sections 389 and 390 Code of Criminal Procedure (Act XXV of 1861). See also Reg. *v.* Shah Mahomed (3 S. W. R. Cr. 70.) Reg. *v.* Noor Khan Chowdhry (1 S. W. R. Cr. 11). Reg. *v.* Sheikh Mustafa (1 S. W. R. Cr. 15).

Reg. v. Noor Khan Chodhry, 1 S. W. R. Cr. R. 11.

When an accused person is found to be insane before the completion of his trial, the Judge should postpone the trial under section 389 and report the case to the Lieutenant-Governor under section 390 of the Code of Criminal Procedure (Act XXV of 1861) instead of trying the accused when he is incapable of making his defence and acquitting him under section 394 on the ground that he committed the offence charged when he was incapable of knowing that he was doing wrong, and consequently that he has committed no offence under section 84 of the Penal Code.

Reg. v. Pursoram Doss, 7 S. W. R. Cr. R. 42.

Case in which the prisoner, notwithstanding that he had been convicted by the Sessions Judge was acquitted by the High Court on the ground of insanity, under section 393 of the Code of Criminal Procedure (Act XXV of 1861), and directed to be kept in safe custody, pending the orders of the local Government to be applied for by the Judge.

Reg. v. Ram Rutton Doss, 9 S. W. R. Cr. R. 23.

A Magistrate rightly commits for trial at the Sessions a prisoner charged with murder, whom he finds to be sane at the time of the preliminary investigation, although he was insane when he committed the act.

Reg. v. Rughooa, 6 S. W. R. Cr. R. 3.

Where a Magistrate has kept in custody an insane prisoner, and reported the case to Government, his successor, instead of striking off the case, is bound to resume the investigation under section 391 Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Mustafa, 1 S. W. R. Cr. R. 1.

Course to be pursued by Sessions Judges in the case of apparently insane persons charged with murder.

(Hera Punja, 1 Bom. Rep. 33).

Romon Audheekaree, Case of, 10 S. W. R. Cr. R. 37.

Where a prisoner was declared by the civil surgeon to be insane at the time he was called on to make his defence, it was held that it was irregular to acquit him. Proceedings should have been stayed, and the prisoner detained, pending the orders of Government.

Reg. v. Doorjodhun Shamonto alias Deejobor, 19 S. W. R. Cr. R. 26.

A Sessions Judge in his charge to the jury, told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time he committed the offence. Held, that the issue whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence, was a preliminary issue to that put by the Sessions Judge, and should under section 425 of the Code of Criminal Procedure (Act X of 1872) have been first submitted to the jury.

Reg. v. Jugo Mohun Malo, 24 S. W. R. Cr. R. 5.

The test to determine whether a person who has committed an act which is charged against him as an offence, was of sound mind at the time of its commission, is whether he knew that he was doing wrong.

Reg. v. Bheekoo Kalwar alias, Bhek Sha, 10 B. L. R. App. 10.

The facts of this case appear sufficiently in the judgment of PHEAR, J.—"In this case the prisoner has been convicted of murder and sentenced to death, and the record has come before us in due course for the confirmation of that sentence. The Judge reports that, under section 271 of the Criminal Procedure Code, he enquired of the accused whether he wished to appeal, and he signified his intention of not doing so. On referring to the record we find at the outset a statement written by the judge to this effect.

"The demeanour of the accused when called on to plead to the charges was so peculiar, that I entertained doubts as to his sanity. I therefore thought it necessary to try the question of the accused's unsoundness of mind." The judge then states that he took the evidence of the civil surgeon, and concludes in these words:—"On the evidence of the civil surgeon, I cannot hesitate to pronounce that the accused is of sound mind and capable of making his defence." Thereupon the trial proceeded before the jury. Section 425 of the Criminal Procedure Code (Act X of 1872) enacts that, if any person committed for trial before a Court of Session shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court, shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed." It appears to us from the use of the words "in the first instance" clear that the Legislature intended the trial of this issue of insanity to be considered as part of the trial of the accused person before the Court; and then we find upon referring back to section 232 that "all trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors." Here the trial was to be by jury; and reading the two sections together, we think that the preliminary issue which the Sessions Judge tried ought to have been tried by the jury, and not by himself personally. On that ground we think that the whole of the trial has been vitiated, and that the conviction and sentence must be set aside and a new trial directed.

Reg. v. Nobin Chunder Banerjee, 13 B. L. R. App. 20.

The jury in this case found that the prisoner caused the death of his wife; but that he was not guilty of murder, because when he killed her, he, by reason of unsoundness of mind, was incapable of knowing that he was doing an act which was wrong or contrary to law. The Sessions Judge, disagreeing with the verdict of the jury as regards the unsoundness of the prisoner's mind, was of opinion that he ought to have been convicted of murder; and he, under section 263 of the Criminal Procedure Code (Act X of 1872) submitted the case to the High Court, considering it necessary for the ends of justice to do so. In the "grounds"

recorded by the Judge as required by section 464, he said that in his opinion the verdict was opposed to the evidence on the record, that the accused was not of unsound mind; and that he committed the offence of murder. It was contended for the prisoner that as, under section 257 of the Criminal Procedure Code, it is the duty of the jury (as distinguished from the duty of the Judge) to decide which view of the facts is true, the High Court cannot disturb the verdict of the jury, if there is on the record any evidence whatever in support of it. But section 257 must be read as qualified by section 263, the effect of which is that, if the Judge disagrees with the jury, and submits the case to the High Court, the whole matter is opened up, the High Court must treat the case as before it on appeal, may convict the accused person on the facts, and, if it does convict him, shall pass the proper sentence upon him. The powers given to the High Court by section 263 are not to be lightly exercised; and the unanimous verdict of a jury ought not to be set aside even if the Sessions Judge disagrees with it, unless that verdict is clearly and patently wrong and unsustainable on the evidence. Held, that there was scarcely any evidence on the record of unsoundness of mind and that, such as it was, it was wholly unreliable and worthless for the particular purpose of proving insanity. It is not because a man commits a very horrible murder, or because he commits it while laboring under strong passions and feelings, that therefore the world is to assume that he must have been insane when he committed the deed. The fact of unsoundness of mind is one which must be clearly and distinctly proved, before any jury is justified in returning a verdict under section 84 of the Penal Code. Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved. The prisoner was convicted and sentenced under section 302 of the Penal Code, (culpable homicide not amounting to murder) to transportation for life.

Empress v. Joy Hari Kor, 2 I. L. R. Calc. 356.

The authority of the Criminal Courts over an accused, declared under section 426 of the Criminal Procedure Code, (Act X of 1872) to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the Local Government, and such authority can only be revived under the circumstances mentioned in section 432.

Empress v. Husen, 5 I. L. R. Bom. 262.

The provisions of section 186 of the Code of Criminal Procedure (Act X of 1872) do not apply to a person who is of unsound mind; they apply to persons who are unable to understand the proceedings from deafness, or dumbness, or ignorance of the language of the country, or other similar cause. But where the inability to understand the proceedings is due to unsoundness of mind, the procedure provided in Chapter XXXI of the Code must be followed. Where a Magistrate found that an accused person convicted of theft was an imbecile, and consequently unable to understand the proceedings, but that he was not of unsound mind, the High Court held that this distinction was without a difference and, under section 297 of the Code, annulled the conviction, and declaring the accused to be of unsound mind, directed that he should be released on sufficient se-

curity being given that he would be properly taken care of, and prevented from doing injury to himself or any other person, and for his appearance when required; and that, in default of such security being given, the case should be reported to Government.

Course to be pursued when on the trial of a prisoner, the Court may entertain doubts as to his sanity.

Reg. v. Hira Punja 1 Bom. Rep. 33.

When, upon the report of the civil surgeon that an accused person was of unsound mind, a Magistrate discharged the accused, and made him over to his brother for safe custody it was held, that the proceedings were illegal; because if the order was made under section 426, the civil surgeon should have been examined; and if it was made under section 429, the accused should have been detained in custody and the case reported to government.

Proceedings of 13th Oct., 1880. Weir, 369.

A person who is incapable of making his defence is not to be tried. If he should afterwards be found capable of making his defence, the procedure prescribed in sections 427, 428 and 432 should be followed.

Proceedings of 3rd Dec., 1880. Weir, 370.

JURY.

In charging a jury in a case of culpable homicide not amounting to murder, a Judge should call upon the jury to state which description of culpable homicide they consider the accused to have committed, section 304 of the Penal Code, prescribing different punishments for that offence. Where the Judge omitted to require the jury to do this, the High Court held that the conviction was for the lighter description of the offence.

Reg. v. Ameer Khan, 12 S. W. R. Cr. R. 35.

In giving a warning to a jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points, the witnesses made different statements, a Judge exercises a wise discretion, and affords no ground for the objection of misdirection to the jury.

Reg. v. Bustee Khan, 1 S. W. R. Cr. R. 17.

In a case in which the principal evidence against an accused is the evidence of an approver, a Sessions Judge should carefully warn the jury of the infirmity which attaches to that evidence, and he should also tell them (if the fact be so), that the approver is speaking under the influence of an offer of conditional pardon.

Reg. v. Bykant Nath Banerjee, 10 S. W. R. Cr. R. 17.

The corroboration of the evidence of an approver, should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does.

Evidence of character and previous conduct of a prisoner, being matters of prejudice, and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the jury.

Reg. v. Choonee & others, 5 S. W. R. Cr. R. 13.

The omission of a Judge to point out to the jury the weakness of the evidence against the accused, and the possibility of other persons being the guilty parties, does not amount to a positive misdirection. Where there is some evidence to go to a jury, the Court cannot interfere. There must be misdirection or some error in law. The case commented on, however, as unsatisfactory.

Reg. v. Gogalao & others, 12 S. W. R. Cr. R. 80; S. C. 4 B. L. R. Ap. 50.

In reviewing the charge of a Judge to a jury in the mofussil, it is sufficient to see whether the tendency of the charge, taken as a whole, has given a correct or incorrect direction to the mind of the jury, and it is not correct to apply to such charge the criticisms which would be applied to a charge of a Judge in a Court in England.

Reg. v. Greedhary Manjee, 7 S. W. R. Cr. R. 39.

Where there is no evidence against a prisoner, the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not.

Reg. v. Gunesh Koormee, 4 S. W. R. Cr. R. 1.

The prisoner retracted his statement when read over to him, and said that he was compelled to make it. The Judge, without making any enquiry, or taking any evidence on the point, submitted the prisoner's statement to the jury as a confession. Held, that the Judge was wrong in so doing, and that he should rather have charged the jury not to accept the prisoner's statement as a confession.

Reg. v. Gunesh Lushkar & others, 9 S. W. R. Cr. R. 72.

In charging a jury on the point of provocation in a case of culpable homicide, a Judge should tell the jury that, to bring the case within the exception to section 300, Penal Code, the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control, and that the provocation was not voluntarily provoked by the prisoner as an excuse for doing harm.

Reg. v. Gunga Bishen & others, 1 S. W. R. Cr. R. 25.

A Judge in charging a jury should avoid expressing any decided opinion. All that a charge should contain is a statement of the evidence *pro* and *con*, with a running commentary as to its agreement with the other facts of the case.

Reg. v. Hosseinee, 8 S. W. R. Cr. R. 60.

Whether or no a child was competent to give evidence within the meaning of section 14, Act II of 1855, was a question for the Judge to decide, and not for the jury, the amount of credit to be given to the statement, being all that fell within the province of the jury.

Reg. v. Kallychurn Gangooly, 7 S. W. R. Cr. R. 2.

The verdict of the jury was reversed, on the ground of misdirection by the Judicial Commissioner in not having left the cause of death and the prisoner's connection with certain attempts at bribery as questions for the consideration of the jury. The admission of hearsay evidence prohibited.

Bharut Chunder, Christian, Appellant, 1 S. W. R. Cr. R. 2.

A Judge is not bound to try a native Christian with the aid of a Christian jury.

The subsequent making away with property by a person originally in lawful possession of the same, is not theft, but criminal breach of trust. A Judge in directing a jury, shonld confine himself to a general commentary on the evidence and a statement of the legal offence proved, should such evidence be credited. He should not give a positive opinion as to the guilt or innocence of the accused person.

Reg. v. Dassee Mosulmany, 14 S. W. R. Cr. R. 46.

A Judge ought not to introduce into his direction to the jury, any question as to recommending a prisoner to mercy, but should leave that entirely to the jury.

Reg. v. Hargabind Pal, 7 B. L. R. App. 57.

A Magistrate cannot receive and enforce the award of a jury under section 310 of the Criminal Procedure Code, (Act VIII of 1869) delivered long after the day fixed for the purpose. A jury appointed under section 310 is not properly constituted when only the foreman is appointed by the Magistrate, and the rest of the members by the parties. And see Dinonath Chuckerbutty *v.* Hurgobind Pal, 16 S. W. R. Cr. R. 23.

Reg. v. Kalicharan Dass, 6 B. L. R. Ap. 86; S. C. 15 S. W. R. Cr. 17.

In his charge to the jury, the Judge should draw a distinction between the two classes of culpable homicide mentioned in section 304 of the Penal Code, and direct them to find specially under which, if either, the prisoner, was guilty. See also Reg. *v.* Amir Khan and others, 6 B. L. R. App. 87 note.

Reg. v. Khoodeeram, 8 S. W. R. Cr. R. 39.

Trial by jury ceases in a district, when the district ceases to belong to a division to which trial by jury has been extended.

Reg. v. Kishtoram Dass, 13 S. W. R. Cr. R. 59.

Held, with reference to the provisions of sections 445 A. and 445 B. of Act VIII of 1869, that the chief executive officer of a non-regulation province, is bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Sessions, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Sessions.

Reg. v. Kootub Sheikh & others, 6 S. W. R. Cr. 17.

A verdict of guilty of dacoity against certain of the prisoners set aside, on the ground of misdirection, the Judge having omitted to point out to the jury the danger of relying upon the uncorroborated testimony of accomplices.

Reg. v. Krisno Churn & others, 16 S. W. R. Cr. R. 56.

The allowing of an objection to a juror coming within the third clause of section 344 of the Code of Criminal Procedure (Act XXV of 1861) is in the discretion of the Court, and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous.

Reg. v. Kulum Sheikh & others, 10 S. W. R. Cr. R. 39.

In charging a jury, a Sessions Judge should not tell them that the prisoners had previously been bad characters. That fact might be taken into consideration by a Sessions Judge in passing sentence when the prisoners are convicted.

Reg. v. Madhab Mal & others, 1 S. W. R. Cr R. 22.

Held by the majority of the Court, that the omission of the Judge to enter into details regarding the identification of stolen property, does not amount to a misdirection to the jury.

Reg. v. Mookhtaram Mundle, 17 S. W. R. Cr. R. 45.

Held, that it was no misdirection on the part of the Judge, in not calling the attention of the jury to clauses 1 and 2 of section 100 of the Penal Code, when he particularly called their attention to clause 6 of that section.

Reg. v. Ram Gopal Dhur, 10 S. W. R. Cr. R. 7.

A summing-up to the jury in which the Sessions Judge gave no aid to the jury in the arrangement of the facts which were spoken to by the witnesses, and himself found facts which he should have put to the jury, was pronounced defective, and a verdict founded thereon was set aside, and the prisoner ordered to be released.

Reg. v. Ram Gopal Dhur, 10 S. W. R. Cr. R. 57.

The evidence of a person stating before the jury upon oath, facts which he does not know of his own observation, facts which constitute the substance of the charge against a prisoner, and which the jury themselves have to enquire into and arrive at as their verdict, ought not to be allowed to go to the jury, and still less so when the person does not orally depose before the jury, but his evidence is presented to them in the form of a written deposition.

Reg. v. Rammonee Sein & another, 7 S. W. R. Cr. R. 105.

Where O. deposed that he and R. were four days in company at M., and the Judge charged the jury that if they found that R. was not in company with O. during those four days at M., but was at S., it did not matter where O. was, because it was clear that he could not have been in company with R. at M., and must therefore have given false evidence when he said that he was during those four days in such company at M.

Held, by the majority of the Court (SETON-KARR, J. dissenting) that there had been no misdirection.

Reg. v. Rookni Kant Mojoomdar, 3 S. W. R. Cr. R. 58.

It is in the province of a jury to weigh the evidence, whether it is true or false, and to judge of the intention.

Reg. v. Ruttun Doss & Doorga Doss, 16 S. W. R. Cr. R. 19.

A jury may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases, to interfere with its verdict; but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as a verdict of guilty cannot, under such circumstances, be sustained.

Reg. v. Sakhaut Sheikh, 2 S. W. R. Cr. R. 13.

In a trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault, (*i. e.*, as to the circumstances of aggravation) to bring in a verdict of guilty of theft.

Reg. v. Satoo Sheikh, 3 S. W. R. Cr. R. 41.

A jury may ignore the graver charges on which a prisoner is tried, and find him guilty of some lesser crime on the evidence.

Reg. v. Seetanath Ghosal, 2 S. W. R. Cr. R. 60.

There is no misdirection, in a case of false evidence, on a Judge pointing out to the jury the contrast between the evidence for the prosecution, and the course followed by the prisoner, namely, a simple denial of the charge, coupled with a refusal to examine the witnesses (in attendance) so long as the Judge left it to the jury to decide between the opposing statements, and to credit whichever they thought most worthy of belief.

Reg. v. Shama Khankee & others, 7 S. W. R. Cr. R. 22.

Where a Sessions Judge left the jury to decide upon the age of a girl who had been kidnapped merely aiding them with his own opinion in which they expressed their concurrence. Held, that there was no misdirection to the jury.

Reg. v. Shumshere Beg, 9. S. W. R. Cr. R. 51.

When a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts, and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. Where the provisions of section 379 of the Code of Criminal Procedure (Act XXV of 1861) were neglected, and the Judge did not sum up the evidence at all, a new trial was ordered.

Elahi Buksh's case (5 S. W. R. Cr. R. 80) considered.

Though the Sessions Judge ought not to have made any remarks as to what the witnesses for the defence stated themselves to have heard, this slight error was held not to amount to a misdirection.

Reg. v. Sheikh Magon, 5 S. W. R. Cr. R. 1.

When a summing-up of a Judge to a jury, points out to the jury the principal features of the evidence, as regards both the case of the Crown and the defence of the prisoners, it complies with the requisition of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Sheppard, 13 S. W. R. Cr. R. 23.

Under section 379 of the Code of Criminal Procedure (Act XXV of 1861), a Judge should sum up the evidence on both sides, before requiring the jury to deliver their verdict. Under section 439, however, the High Court thought it unnecessary to set aside a conviction in a case in which this was not done.

Reg. v. Sitwa, 14. S. W. R. Cr. R. 66.

The finding of a jury, that although the accused killed the deceased, the crime was not murder, not because it fell under any of the exceptions allowed by law, but because the accused had no object in killing him, is not a legal finding, and does not amount to a convictien of culpable homicide not amounting to murder.

Reg. v. Uckoor Ghose, 1 S. W. R. Cr. R. 50.

When a jury is not unanimous, the Judge is not bound to summon a new jury.

Reg. v. Urjoon Biswas, 1 S. W. R. Cr. R. 41.

The drawing up of a list of special jurors, is entirely in the discretion of the clerk of the Crown, and the Court will not interfere.

Shamchand Mitter in re, I. Ind. Jur. N. S. 106.

Improper advice given by the Judge to the jury, upon a question of fact, or the omission of the Judge to give that advice which a Judge, in the exercise of a judicial discretion, ought to give the jury upon questions of fact, amounts to such an error in law in summing-up, as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty.

Elahi Buksh, appellant, 5 S. W. R. Cr. R. 80; B. L. R. Sup. S. C. Vol. F. B. 459.

The power of setting aside convictions and ordering new trials for any error or defect in the summing-up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby.

Remarks on certain irregularities of the Sessions Judge in his summing-up.

Reg. v. Mohabur Singh, 6 S. W. R. Cr. R. 64.

The verdict of a jury cannot be reversed by a Court of Revision, even if it be a verdict of "guilty." The only remedy for the prisoner in such a case is an appeal (which can only be on a question of law) or an application to the Executive Government. Nor can a verdict pronounced by a jury, of "not guilty" be reversed by the High Court on revision, and it is clear that no appeal lies from such a verdict.

Reg. v. Gorachand Ghose, 3 B. L. R. F. B. 1 S. C.; 11 S. W. R. Cr. R. 29.

A Sessions Judge in summing-up is bound to advise a jury on questions of fact, and may tell the jury the impression which the evidence has made upon his own mind.

Dwarkanath Sen & another, Appellants, 13 S. W. R. Cr. R. 34.

In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Session Judge, after considering the evidence, discredited the confession and all the evidence, except that of the medical officer and discharged the prisoner, not considering it necessary that the case should go before a jury. Held, that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury.

Huroo Shaha, case of, 16 S. W. R. Cr. R. 20.

Where a jury convicted a prisoner contrary to the charge of the Sessions Judge, which charge was held by the High Court to have been a proper charge, the High Court refused to interfere, although it concurred with the Sessions Judge in thinking that the verdict of the jury was not correct. The case was one in which an application could be made to the Government; but as regards the Court, the petitions were rejected.

Reg. v. Nidheeram Bagdee & others, 18 S. W. R. Cr. R. 45.

The Sessions Judge differing from a majority of the jury, who acquitted the accused, referred the case to the High Court under section 263, Act X of 1872 to be dealt with on an appeal. Before proceeding with the case, the High Court considered it fair to the accused to give him notice, to bring forward any objections he might have to the Sessions Judge's recommendation.

On a consideration of the evidence, the High Court convicted the accused of the offence with which he had been charged below.

Reg. v. Ootum Dhoba, 19 S. W. R. Cr. R. 38.

Quære:—If the jury in a Sessions trial are not sworn, is the omission one which could be covered by section 13 of the Oaths Act, X of 1873?

Reg. v. Ramsodoy Chuckerbutty, 20 S. W. R. Cr. R. 19.

A Judge ought not to put questions to any of the jury as to his reasons for the verdict he has given.

Reg. v. Meajan Sheikh, 20 S. W. R. Cr. R. 50.

In a case in which the accused were charged with murder (section 302), culpable homicide not amounting to murder (section 304), and voluntarily causing grievous hurt (section 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (section 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regards the three original charges, and recorded a formal order, acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under section 263 of the Code of Criminal Procedure (Act X of 1872); Held, that when (as in this case) the Sessions Judge has approved of a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court cannot, under section 263, convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case.

Reg. v. Udya Changa & others, 20 S. W. R. Cr. R. 73.

As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners not guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the three other charges, and accordingly the Court could not set aside the verdict of the majority on the last count, without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts.

In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with section 263, Code of Criminal Procedure (Act X of 1872), questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the 1st verdict of the jury, but as he had recorded the 1st verdict, he doubted whether he could accept the 2nd verdict, and referred the case to the High Court under the section 263. Held, that section 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Sessions Judge to the jury was answered; and as it appeared from the answers of the jury, that

Reg. v. Sustiram Mandal, 21 S. W. R. Cr. R. 1.

their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is, that a Judge is justified under section 263 in putting questions to the jury.

Rajah Shatyanundo Ghosal v. The Camperdown Pressing Company, Limited, 21 S. W. R. Cr. R. 43.

A Magistrate acting under Act X of 1872, section 523, should exercise his own independent discretion in selecting the members of the jury, and the persons so selected by him, should not be nominees of the party interested in upholding the Magistrate's order.

In this case, the High Court sitting as a Court of Revision under section 297, Act X of 1872, set aside the order of the Magistrate appointing to the jury persons who had been appointed by the opposite party, as it held that the error of procedure was a material one, in as much as the merits of the case had been thereby affected.

Sheikh Nozumuddy v. Hasim Khan, 21 S. W. R. Cr. R. 54.

Where a jury, appointed by a Magistrate under section 523, Code of Criminal Procedure (Act X of 1872), had fully entertained and considered the matter submitted to it, and the individual members of the jury had given in their opinion to the foreman to report to the Magistrate, and the only delay was in the foreman's making the report, it was held that the Magistrate could not appoint a second jury to consider the matter afresh, but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter.

Bindabun Chunder Dutt v. Dwarkanath Sen, 23 S. W. R. Cr. R. 15.

Where a party objects to the verdict of a jury, he ought to give the Magistrate reasonable *primâ facie* ground for the opinion, either that the jury did not in fact apply a judicial discretion to the case, or that the verdict was such as the jury could not have arrived at by a proper exercise of their discretion upon the materials before them.

Reg. v. Gunga Govind Palit, 23 S. W. R. Cr. R. 21.

The High Court set aside the verdict of a jury in this case, because the Judge, in his direction to the jury, omitted to point out the absence of evidence very material to the case of the prosecution, and because he directed the jury to attribute an undue importance to the statements or excuses made by the prisoner in the explanation of certain documents.

Reg. v. Kassim Shaikh, 23 S. W. R. Cr. R. 32.

Held, that the words in section 464, Code of Criminal Procedure (Act X of 1872) that in trials by jury "heads" of the Judge's "charge" are to be recorded, must be construed reasonably, and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge.

Reg. v. Doorgachurn Shome, 24 S. W. R. Cr. R. 30.

Where a case to which Government had not extended trial by jury, was tried by jury, the trial was not considered invalid on that ground; but the Judge's charge was treated as his judgment in the case, and the prisoner's appeal was heard on the facts.

Reg. v. Wuzir Mundul & others, 25 S. W. R. Cr. R. 25.

Wherever trial by jury exists, the verdict of the jury must be accepted, unless it is manifestly and certainly wrong. A verdict based on voluntary confessions is just as good as a verdict based on the testimony of credible witnesses.' It is the province of a jury to decide the credibility of witnesses.

Reg. v. Nakori Paroee & another, 25 S. W. R. Cr. R. 31.

Where, under section 523 of the Criminal Procedure Code (Act X of 1872) a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order.

Reg. v. Chunder Kumar Mazoomdar, 25 S. W. R. Cr. R. 54.

In charging a jury, a Judge is not bound to do more than lay carefully and plainly before them the evidence as recorded by him, noting discrepancies and inconsistencies, and pointing out generally the way in which it is favourable or unfavourable to accused.

Reg. v. Rajcoomar Bose, 10 B. L. R. App. 36.

It is not in every case in which there has been a misdirection to the jury that the High Court will set aside a verdict of guilty, but only in such cases in which the accused has been materially prejudiced, or where there has been a failure of justice.

Reg. v. Sham Bagdi & others, 13 B. L. R. App. 19; S. C. 20. S. W. R. Cr. R. 73.

MACPHERSON, J. :—The evidence against the prisoners, in whose interest the Judge has referred this case to the High Court under section 263 (Criminal Procedure Code, Act X of 1872), is certainly not very strong, in as much as it consists solely of the statement of the prosecutrix. Never the less the evidence is quite sufficient, if believed. The jury did believe it: and how can we say that they were wrong in doing so? It is as likely as not that they were right. And is the High Court to set aside a verdict in such a case? I think we ought not to interfere with a verdict, unless we can say decidedly that we think it is clearly wrong. If we are to interfere in every case of doubt,—in every case in which it may with propriety be said that the evidence would have warranted a different verdict,—then we must hold that real trial by jury is absolutely at an end, and that the verdict of a jury is of no more weight than the opinion of assessors. I presume that if this were the intention of the Legislature, it would have said so.

As it is, I consider that the Court should exercise the powers vested in it by section 263 only in cases in which it finds the verdict of the jury

clearly and undoubtedly wrong. This is not such a case, although I may admit that there may be room for doubts being entertained as to the facts. Therefore I think the verdict of the jury should remain undisturbed, so far as this Court is concerned, and that the Sessions Judge must pass sentence on the prisoners.

Reg. v. Mussamut Itwarya, 14 B. L. R. App. 1.

The High Court will not exercise its extraordinary powers under section 263, Criminal Procedure Code (Act X of 1872) and set aside the verdict of a jury unless it is patently wrong.

Reg. v. Hurro Manji, 14 B. L. R. App. 2 note; S. C. 21 S. W. R. Cr. R. 4.

This was a reference from the officiating Sessions Judge of Hooghly, dated the 18th September 1873. PHEAR, J. :—In regard to this reference made to this Court under the provisions of section 263 of the Criminal Procedure Code (Act X of 1872), we may say that we entirely concur in the opinion lately expressed by this Court, in a recent case, namely, "that the powers given to this Court by section 263 are not to be lightly exercised; and that the unanimous verdict of a jury ought not to be set aside, even if the Sessions Judge disagrees with it, unless that verdict is clearly and patently wrong, and unsustainable on the evidence." It seems to us that the verdict in this case, with which the Sessions Judge disagrees, cannot be said to be "clearly and patently wrong, and unsustainable on the evidence." If the statement which was made by the prisoner in Court is true, and the jury have no doubt believed that it was true (indeed, according to the reference made to us, by the Judge, they informed him that they did so), then their verdict was probably right in fact. We therefore think that there is not sufficient reason to interfere with the verdict which they gave. That verdict will consequently stand, and the record must be sent back again.

Empress v. Harai Mirdha & Umed Sardar, 3 I. R. R. Calc. 189.

Where the jury acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as provided by section 457 of the Criminal Procedure Code (Act X of 1872) held, that the High Court could, on the case coming before them under section 263 of the Criminal Procedure Code, find the prisoners guilty of such offence.

Empress v. Mohim Chunder Rai & another, 3 I. L. R. Calc. 765.

Per MACLEAN, J. (MITTER, J. *dubitante*). The trial by a jury of an offence triable with assessors is not invalid on that ground, but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by jury is not invalid.

Empress v. Sahae Rae, 3 I. L. R. Calc. 623; S. C. 2 C. L. R. 304.

Where a jury are not unanimous in their finding, and the Judge dissents from the opinions expressed by them, on the case being referred under section 263 of Act X of 1872, the High Court is competent to find the prisoner guilty notwithstanding an acquittal by the majority of the jury. It is the duty of a Judge in

sending up a case to the High Court under sections 263 and 464 of the Criminal Procedure Code, (Act X of 1872) when he disagrees with a verdict of acquittal, to state the offence which, in his opinion, has been committed.

Govt. of Bengal v. Mahaddi & others, 5 I. L. R. Calc. 871; S. C. 6 C. L. R. 349.

The accused were charged under section 149 coupled with section 325, of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under section 325. Held, that such verdict was, under section 457 of the Code of Criminal Procedure, (Act X of 1872) legally sustainable, although that offence did not form the subject of a separate charge. Section 457 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in the fifth clause of section 263 of the Code of Criminal Procedure.

Roshun Doosad v. The Empress, 5 I. L. Calc. 768; S. C. 6 C. L. R. 219.

In charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused. Held, that this amounted to a misdirection; for though section 54 of the Evidence Act (I of 1872) declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he was a bad character is irrelevant" and that the evidence was irrelevant and inadmissible. Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.

Empress v. Rochia Mohato, 7 I. L. R. Calc. 42; S. C. 8 C. L. R. 273.

The fact that a person is a clerk in the office of the Magistrate of the district, is not sufficient to disqualify him from sitting on a jury.

Empress v. Jhubboo Mahton, 8 I. L. R. Calc 739.

Per FIELD, J. :—Irregularities under section 240 of the Criminal Procedure Code (Act X of 1872) in the selection of jurors, and in the admission of the deposition of a medical witness treated, it not being shown that the prisoners had been thereby prejudiced, as being objections which ought not to be entertainsd for the purpose of intertering with the verdict, regard being had to the provisions of section 283 of the Criminal Procedure Code, and section 167 of the Evidence Act.

Empress v. Mukhun Kumar, 1 C. L. R. 275.

Per Curiam :—A very large discretionary power is vested in the High Court by section 263 of the Code of Criminal Procedure (Act X of 1872). No fixed rules can be laid down for the exercise of that discretion in every instance; and the decision in each case submitted must depend upon its own peculiar circumstances. *Per* GARTH, C. J. and PRINSEP, J. (MARKBY, J, *contra*) :—The rule laid down in Queen *v.* Wazir Mundul, 25 S. W. R. 25 Criminal Rulings, goes too far.

PRINSEP, J. (MARKBY, J. *contra*) :—The law does not prevent a Sessions Judge from asking a jury regarding the grounds for their verdict, and such a course is desirable in the ends of justice. See Queen *v.* Sustiram Mundul (21 S. W. R. Cr. R. 1).

Hurree Narain Mookerjea, 2 C. L. R. 518.

Where there are reasons sufficient to warrant a jury in disbelieving the witnesses and in giving the prisoner the benefit of the doubt raised by inconsistencies in that evidence, although another jury might have come to a different conclusion, the High Court will not interfere. It must be shown that the verdict of the jury is certainly unreasonable and perverse. Reg. *v.* Sham Bagdee and others (20 S. W. R. Cr. R. 73) cited and followed.

Tiluckdharee in re, 2 C. L. R. 1.

A majority of the jurors (four out of five) acquitted the prisoner on a charge of attempt to commit rape. The Sessions Judge disagreed with that verdict, and referred the case to the High Court under section 263 of the Code of Criminal Procedure (Act X of 1872) because in his opinion the offence charged was proved. The High Court found that the evidence for the prosecution was fully worthy of belief and consistent with probabilities, and sentenced the prisoner.

Bhootnath Dey & others, Appellants, 4 C. L. R. 405.

In a trial by a jury before a Court of Session upon charges, some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. Held, that it was not competent to the Judge, who disagreed with the verdict, to treat the trial, so far as it dealt with the latter charges, as a trial with the aid of assessors, and concurring with the minority to convict and sentence the accused persons.

It was the duty of the Judge, in such a case, to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with section 263 of the Code of Criminal Procedure (Act X of 1872).

Explanation to section 233 of the Code of Criminal Procedure discussed.

Khorshed Ka[illegible] & another v. Empress, 8 C. L. R. 542.

Where the accused were charged under section 471 of the Penal Code with having, in a suit brought against them by the vendee of their sister to recover possession of certain property acquired by her by right of inheritence from her father, fraudulently and dishonestly used a forged document as genuine, knowing, or having reason to believe it to be a forged document, it appeared that the accused were in possession of the

property, and that the document in question purported to be a deed of gift from their father. It was proved that the endorsement of registration which appeared in the document was a forgery. In his charge to the jury the Sessions Judge omitted to deal with the fact of the accused being in possession of the property. He also directed that, the registration endorsement having been proved to be a forgery, it was for the accused persons to establish the genuineness of the document. Held, that it was not sufficient for the jury merely to decide on the evidence whether the document was a forgery, and whether the accused knew it was a forgery when they used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly.

Held also, that the Sessions Judge in omitting to deal with the fact of the possession of the accused, and in throwing the *onus* of proving the genuineness of the document upon them, had misdirected the jury.

Reg. v. Lalubhai Gopal Dass & others, 1 I. L. R. Bom. 232.

A prisoner not being a European British subject, who is not charged jointly with a European British subject, is not entitled, under the provisions of the High Court Criminal Procedure (Act X of 1875), to be tried by a jury of which, at least five persons shall not be Europeans or Americans.

Reg. v. Vithaldas Pranjivandas & others, 1 I. L. R. Bom. 462.

Act X of 1875, section 33, contemplates that the names of the jury to be "chosen by lot" shall be drawn out of one box containing the names of all persons summoned to act as jurors.

Reg. v. Khanderav Bajirav & others, 1 I. L. R. Bom. 10.

The Code of Criminal Procedure (Act X of 1872), section 263 casts upon the High Court the duty both of Judge and jury; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior Courts in England, it will, as far as may be, be guided by the principle of English law that the verdict of a jury will not be set aside unless it be perverse and patently wrong, or may have been induced by an error of the Judge. In a proper case, however, the High Court will rectify the verdict of a jury.

Reg. v. Dayal Jairaj Khatav Ladha & Kallianji Ladna, 3 Bom. Rep. Crown Cases, 20.

By the practice of the Supreme Court at Bombay before the Indian Penal Code came into operation, on a trial for treason or felony the jury (as in England) was kept together during the night under the charge of officers of the Court; but on a trial for misdemeanor it was in the discretion of the Judge whether they should be kept together, or allowed to return to their homes for the night, the latter being generally done; and after the Code came into operation, the practice continued the same, as well in the Supreme Court, as subsequently in the High Court; the Judges applying the rule by determining whether the offence under trial would by the old law have been a felony or a misdemeanor. Where the Judge, on a charge under section

467 of the Indian Penal Code, permitted the jury to separate on the first day of the trial and before verdict:—Held, that the exercise of his discretion was not a matter to be reviewed by the High Court under section 26 of the Letters Patent, there being no error in any point of law, as the offence charged was only a misdemeanor under the law in force before the Indian Penal Code took effect.

Reg. v. Lakshuman Ramchandra & others 3 Bom. Rep. Crown Cases, 56.

Held, that it was not necessary, in a trial by jury before a Court of Session, under the provisions of the Code of Criminal Procedure (Act XXV of 1861), that the jurors should be sworn.

Reg. v. Shek Ali valad Fakir Muhammad, 5 Bom. Rep. Crown, Cases, 9.

On a trial by jury the Sessions Judge has no power to alter the charge after the delivery of the verdict.

Reg. v. Fattechand Vastachand et al, 5 Bom. Rep. Crown Cases, 85.

On a trial by jury the Sessions Judge in summing-up should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the jury ought to attach to its several parts. His omission to do so, *if the accused is thereby prejudiced,* amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict. No general rule can be laid down as to when a prisoner is prejudiced by a defective summing-up, but in general if the finding of the jury in such a case is one that an Appeal Court would set aside, if the trial had taken place with the aid of assessors, the Court will interfere and set the verdict aside. In capital cases, and all cases of a serious or complicated nature, the Judge ought to read over the evidence *in extenso* to the jury. The Judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution by the committing Magistrate, but whose evidence is dispensed with by the prosecutor at the trial. His refusal to do so is, however, not an error in law.

Reg. v. Shek Miya valad, Daud 6 Bom. Rep. Crown Cases, 10.

Held (WARDEN, J. *dissentiente*), that the omission of the Session Judge to tell the jury that the statement of one prisoner is not evidence against his fellow-prisoner is a material error, and one fatal to the trial, notwithstanding that the Session Judge dealt with the evidence against each of the prisoners separately.

Reg. v. Pestanji Dinsha, & another, 10 Bom. Rep. 75.

Semble:—Non-direction by a Judge is not a matter upon which the Advocate General should grant a certificate under Clause 26 of the Letters Patent. In considering whether a Judge has misdirected the jury, the tenor and general effect of the whole summing-up should be looked at, and if, upon the whole summing-up, the Court is of opinion

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that substantially the proper direction has been given ~~to the~~ jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point.

Reg. v. Aruj Shaikh, 4. S. W. R. Cr. R. 18.

Under sections 379 and 382, Code of Criminal Procedure (Act XXV of 1861) a Sessions Judge should sum up the evidence on both sides, and record the ground of his decision, and the sentence, when passed should be recorded in a certain specified form.

Reg. v. Bhagidhone Katchari & others, 8 S. W. R. Cr. R. 53.

The Commissioner of Cooch Behar has no power to hold trial by jury in the Gowalpara district.

Reg. v. Bissonath Mitter, 6 S. W. R. Cr. R. 6.

The High Court (like the Sessions Judge) cannot nullify the verdict of a jury by interfering to lessen the punishment. Section 405 (Act XXV of 1861) refers to cases where the offence is proved, but where the punishment inflicted is held to be too severe, and not to cases where the conviction itself is considered improper.

Reg. v. Bolakee Koormee, 6 S. W. R. Cr. R. 72.

It is the duty of the Judge to state to the jury what are the principal points in the evidence, and how they bear for or against the prisoner—in short, to render the jury every assistance in his power towards coming to a right conclusion.

Reg. v. Gajraj & another, 3 B L. R. A. Cr. 43.

Upon a plea of *alibi* by the prisoners that they had left the place on the 12th April 1869, and reached Port Canning on the 20th of the same month, and were not at Patna on the 30th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper; one bearing the endorsement of the stamp-vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prove that the prisoners had signed it. The Judge drew the attention of the juror to this document, and adverted to it in these terms :—" If the written statement was drawn up on any earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was brought, *i. e.*, the 18th. *Held*, that the document should not have been received in evidence; and that there was a misdirection which contributed materially towards the jury finding the prisoners guilty.

Reg. v. Joykisto Gossamy, 7 S. W. R. Cr. R. 22.

Where a Sessions Judge refused to accept the verdict of the jury, acquitting the prisoner on the first count, and finding him guilty on the second, and required them to find the prisoner guilty on the first count. Held, that the Judge had no power to control the jury in this manner, but that he should have recorded the finding on the first count as the verdict in the case, and sentenced the prisoner accordingly.

Reg. v. Narain Bagdee, 5 S. W. R. Cr. R. 3.

It is no misdirection for a Judge to tell the jury that if the prisoner could not prove how he became possessed of certain articles, it was their duty to convict him, for the presumption in such a case was legally valid that he knew the property had been unlawfully acquired &c.

Reg. v. Nawab Jan & others, 8 S. W. R. Cr. R. 19.

Conviction and sentence set aside (GLOVER, J. dissenting) as to two of the prisoners on the ground that there was a misdirection to the jury, because the Judge in summing-up omitted to advise the jury not to count upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in law.

Reg. v. Hari Prasad Gangooly & others, 8 B. L. R. Ap. Cr. R. 557; S. C. 14 S. W. R. Cr. R. 59.

The prisoners were tried under section 330 of the Penal Code (for voluntarily causing hurt to a girl) and under section 348 (for wrongfully confining her). Circumstances of aggravation were alleged, as lifting up and using a sword, of lowering the girl into a well and of pricking her with thorns. The jury in their verdict stated that they disbelieved these allegations and also the charge of illegal confinement, but that they believed that some slaps had been given. The Judge then asked the jury whether they convicted on either, and if so, which head of the charge. They answered that they believed the prisoners had beaten the girl, and that they convicted them under section 330. Held, that the question put by the Judge to the jury was a proper one, and not one of law. The conviction was upheld.

Such a case is not governed by the rule of English law as to special verdicts.

Reg. v. Londley, 3 S. W. R. Cr. R. 14.

Requirements of the law with regard to the trial by jury of a stranger and a foreigner.

Reg. v. Setul Chunder Bagchee, 3 S. W. R. Cr. R. 69.

A Judge ought to explain to the jury the legal construction to be put upon a document adduced in evidence.

Reg. v. Sheikh Golam Mustuffa, 3 S. W. R. Cr. R. 29.

When a Judge differs from the jury, he should pass such a sentence as he would have passed had he agreed with the jury.

Reg. v. Chunder Koomar Mozoomdar, 24 S. W. R. Cr. R. 77.

Where a Judge in his charge to the jury admitted as receivable evidence, a hearsay statement against the accused, and also an anonymous letter which was put in without an attempt to show how or by whom it was sent, it was held that the jury had been misdirected and the accused prejudiced. The High Court on this, not being able to say posi-

tively, on a perusal of the evidence, that the accused was innocent, did not dispose of the case, but ordered a new trial.

Petamber Jugi v. Nasaruddy, 25 S. W. R. Cr. R. 4.

The law requires a juryman to exercise his own understanding on the case submitted to him and to decide on evidence, and not to follow blindly the opinion of his fellows. Where one out of three (in a jury of five) depends on the inspection and inquiries of the other two, the verdict of the three is not that of a legal majority. The provisions of Act X of 1872, sections 521 to 523 are only applicable where there is no doubt that the place where the alleged obstruction exists is a public thoroughfare.

Empress v. Jhubboo Mahton, 8 I. L. R. Calc. 738. S. C. 12 C. L. R. 233.

Per FIELD, J. :—It is the duty of a Judge to give a direction upon the law to the jury so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection.

Imperatrix v. Bhawani Bin Panduji & Sakaram Bin Khundoji, 2 I. L. R. Bom. 525.

The "dissent" referred to in the 4th Clause of section 263 of the Criminal Procedure Code (Act X of 1872) must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case for the High Court.

Empress v. Bhoirub Chunder Datta, 10 C. L. R. 193.

A jury having been applied for and duly appointed under section 521 of Act X of 1872, one of the jury unknown to the Court substituted another man in his place. The Magistrate accepted the report of the majority of the jury so constituted, and made an order under section 526. This order having been disobeyed, proceedings were taken under section 188 of the Penal Code against the person to whom it was directed, and he was convicted and sentenced to imprisonment. Held, that the report upon which action was taken not being the report of a regularly constituted jury, the order and the conviction and sentence passed on disobedience thereto, were illegal.

Roghuni Singh & others, Appellants, 11 C. L. R. 569.

It is improper for the Court in addressing the jury to refer to discrepancies between the evidence given at the trial and statements made to and recorded by the police.

The examination of an expert ought generally to be by questions put hypothetically upon facts proved or to be proved by the evidence of other witnesses.

Reg. v. Abdool Juleel, S. W. R. 1864, Cr. R. 5.

A Judge may give the jury his opinion of the guilt or innocence of the prisoner if he shows them clearly that the decision rests with them.

Reg. v. Mahadeo, S. W. R. 1864, Cr. R. 15.

Where different trials are held at different times and against different prisoners in respect of the same crime, a new charge, specifying the particulars required by Circular Order, No. 5, dated 6th February 1863 should be delivered in each case.

Proceedings of 8th Nov. 1866. Weir, 304.

A Judge is not warranted in passing a merely nominal sentence because he cannot concur in a jury's verdict of guilty. In doing so, he would usurp the functions of the jury. He is bound to pass a sentence adequate to the offence found by the jury to have been committed,

Proceedings of 15th Aug. 1873. Weir, 365.

Exemption of Hospital Assistants &c. from liability to serve as assessors and jurors.

Proceedings of 11th Feb., 1863. Weir, 365.

The number of persons to be summoned as assessors or jurors should not be less than double the number required for any one trial, and there should ordinarily be a change of assessors after the trial of every third or fourth case.

Empress v. Dhunum Kazee, 9 I. L. R. Calc. 53. S. C. 11 C. L. R. 169.

Notwithstanding the large discretionary powers vested in the High Court under section 263 of Act X of 1872, the Court will adhere generally to the principle of the Courts in England, *viz.*, that the Court will not set aside the verdict of a jury unless it be perverse and patently wrong, or may have been induced by the error of the Judge; and when the Court is asked to do so on the ground that the verdict is given against the weight of evidence, the question is, not whether the learned Judge who tried the case was or was not dissatisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to.

Under section 263 of the Code of Criminal Procedure, a Court is authorized to ask the jury such questions as are necessary to ascertain what their verdict really is; but where the verdict, although perhaps erroneous, is not ambiguous, it is the duty of the Judge to record it without further question.

Hurry Churn Chuckerbutty v. The Empress, 10 I. L. R. Calc. 140; S. C. 13 C. L. R. 358.

Although section 303 of the Criminal Procedure Code (Act X of 1882) empowers a Judge to ask the jury such questions as are necessary to ascertain what their verdict is, it was never contemplated that, on ascertaining that the jury are not unanimous the Judge should make minute enquiries to learn the nature of the majority and its opinion, so that he should have the opportunity of accepting or refusing that opinion as a verdict according as it coincides with his own opinion or not.

Whatever may be the opinion of the Judge, if he goes so far as to ask the jury what is the exact majority, and what is the opinion of the majority, he ought to receive that verdict without hesitation, and if he differs from it, he should proceed as directed by section 307.

It is open to a Judge in charging the jury, to express his opinion as to the effect of a certain portion of the evidence; but he should always be careful to add that it is for the jury to form their own opinion.

Queen-Empress v. Bepin Biswas & others, 10 I. L. R. Calc. 970.

Mere misunderstanding on the part of the bystanders in Court, or Counsel engaged in a case, of expressions used by a Judge in charging a jury, (where it appears that the expressions used by the Judge were such as ought to have been understood by any reasonable man, having regard to what was proved in the case, and what was said to the jury afterwards), will not constitute misdirection.

Queen-Empress v. Shibchunder Mitter, 10 I. L. R. Calc. 1079.

JURISDICTION.

The construction of section 29 of the Letters Patent, 1865, is that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a Mofussil Court which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil. "Competent to investigate it," does not include competency as regards local jurisdiction; but only competency with regard to the offender, the nature of the offence and the punishment.

Reg. v. Nabadwip Gosawmi, 1 B. L. R. O. Cr. 15.

The High Court could have directed the preliminary investigation of a charge against N. by the Deputy Magistrate of Serampore, but it did not appear in the caption of the charge or in evidence that the Court had so directed it. Held, no ground for arrest of judgment, but the objection might have been raised before the jury was sworn under section 41 of Act XVIII of 1862.

The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed but the contrary.

Semble:—The High Court was bound to take judicial notice that R. was a Justice of the Peace for Bengal.

Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Chapter XV of the Code of Criminal Procedure (Act XXV of 1861) and consequently do not fall within the provisions of section 271 of that Code.

Anonymous, 4 B. L. R. F. B. 41.

The High Court has no jurisdiction to quash the proceedings of a Sessions Judge, and to declare that the Judge acted illegally in making observations upon the merits of a case in which, while admitting that he had no power to interfere, he should not have passed any opinion upon the evidence.

Pal Charrier & others, 5 S. W. R. Cr. 2.

Ramdhone Mundul, Appellant, 4 S. W. R. Cr. R. 15.

Under section 405, Code of Criminal Procedure (Act XXV of 1861) the High Court cannot mitigate or remit a sentence passed by a Magistrate, and confirmed in appeal by the Sessions Judge, when there is no error in law in the conviction. In this case the sentence appeared to the Court to be excessive, but the Court could not interfere.

Reg. v. Baktear Maifaraz, 6 B. L. R. 698, F. B., S. C. 15 S. W. R. Cr. R. 64.

When an Appellate Court directs further evidence to be taken by a Subordinate Court under section 422 of the Code of Criminal Procedure (Act XXV of 1861), it is competent to the Subordinate Court before which such evidence is given, if any offence against public justice as described in section 169, is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of section 171. The words "whether for the decision of such cases in the first instance or on appeal, or for commitment to any other Court or officer" in section 11 of the Code of Criminal Procedure, are not an exhaustive enumeration of the functions of Criminal Courts.

Reg. v. Vencanna & Narasa, 3 Mad. Rep. A. J. 354.

The Sessions Court of Bellary has no jurisdiction under the Penal Code to try native subjects of the Jaghirdah, or Rajah of Sundoor for offences committed in the plateau of Ramandoorg upon native inhabitants of the village of Ramandoorg.

Ramandoorg is a portion of the territory of Sundoor, and the Rajah is in the position of a native Chief or ruler.

A treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation. "It being probable that as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others will reside there. I have relinquished to the Company's Government the Police and Magisterial functions of maintaining peace, and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder &c. The Collector is to have jurisdiction in such matters."

Held, that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely, Europeans and their servants, and all other resident persons, not native subjects of the Rajah, and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons.

Indrobur Thaba, Appellant, 1 S. W. R. Cr. R. 5.

A Magistrate only, and not a Sessions Judge, has power to try cases under section 29, Act V of 1861. Section 152 of the Code of Criminal Procedure (Act XXV of 1861) does not apply to cases in which there has not been a continuous detention of 24 hours.

Ramrutton Neogee & others, petitioners, 6 S. W. R. Cr. R. 3.

A Magistrate may take cognizance of a case on the information of a third person without any complaint by the party injured.

Indrochunder Bose in re, 4 S. W. R. Cr. R. 7.

A Deputy Collector having committed an agent for false verification of a plaint, the Assistant Magistrate acted without jurisdiction in taking security from the agent for the appearance of his principals before obtaining the sanction of the Deputy Collector to proceed against the principals.

Sheikh Booluck in re, 5 S. W. R. Cr. R. 53.

The jurisdiction of a Deputy Magistrate competent to try the offence charged is not affected by the previous conviction of the prisoner.

Shanto Teorni v. Belilias, 3 B L. R. Ap. 151; S. C. 12 S. W. R. Cr. R. 53.

S. T. brought a charge of theft against B. before a Magistrate. The case was made over to the Deputy Magistrate, on whose suggestion the Magistrate ordered that there should be a police enquiry. The Police Superintendent reported that in his opinion the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. S. T. then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the police proceedings. The Magistrate recorded the following order: The case has been dismissed, and the accused Mrs. B. has received permission to prosecute the woman S. T. for false charge; the present petition may be put in in defence in that case." *Held,* the order of the Magistrate must be quashed, (1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate, (2) because the order above was not a judicial dismissal of the case. The case remanded for the trial of the original charge, as brought by S. T.

Aneef Putney v. Ramsooder Chuckerbutty, 1 S. W. R. Cr. R. 16.

The error of a Deputy Magistrate in proceeding by warrant instead of of by summons furnishes no ground for quashing his proceedings. The High Court has no power to interfere on a question of evidence.

Anonymous, 4. S. W. R. Cr. R. 2.

A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction under section 29, Act V of 1861 to fine police officers for violation of duty.

Ramjai Mazumdar in re, 6 B. L. R. App. 67.

Where an accused person was discharged by a Deputy Magistrate under section 225 of the Code of Criminal Procedure (Act XXV of 1861) after a preliminary enquiry, the Magistrate of the district may proceed against him afresh under section 68 of the Criminal Procedure Code. *Per* MARKBY, J.:—Section 435, Act VIII of 1869 provides for the revision of proceedings which have already been commenced; section 68 (Act XXV of 1861) provides for the institution of proceedings *de novo.* (See in re, Jagabandhu Myti *v.* Gobardhan Bera, 4 B. L. R. A. Cr. 1).

Nussur Ali v. Hart, 6 S. W. R. Cr. R. 42.

Prisoner was convicted by one Court of criminal intimidation on a charge by A., the conviction being confirmed on appeal by the Judicial Commissioner; but was acquitted by another Court of assault and robbery alleged to have been committed on the same day, on a charge by B. The latter Court pointed out to the Judicial Commissioner that the facts proved in B.'s case raised a strong presumption that A.'s case was a false one, the result of a conspiracy against the prisoner; and the Judicial Commissioner proposed to set aside the conviction of the prisoner in A.'s case, not on the evidence in that case, but on extraneous evidence derived from B.'s case. Held, that the High Court had no jurisdiction in the matter; but that the Judicial Commissioner could apply to the Government for a pardon on the ground stated by him.

Mussamut Kulree v. Jhoonoo, 7 S. W, R. Cr. R. 52.

Offences coming under section 509 of the Penal Code are triable by the Magistrate of the district only.

Horikchand v. Mohendronath Haldar & others, 9 S, W. R. Cr. R. 29.

In a case where it is doubtful whether the offence is committed in British or foreign territory, the question of jurisdiction cannot be fully determined unless the Magistrate proceeds with the investigation, and states what in his opinion is proved by the evidence of the witnesses.

Prankristo Pal, case of, 14 S. W. R. Cr. R. 41.

A Magistrate is competent under section 133 of the Code of Criminal Procedure (Act XXV of 1861) to direct an enquiry to be made by a police officer into an offence punishable under a local Act such as the Police Act.

Held, that where a Magistrate professes to act under one section of the Criminal Procedure Code under which he has no jurisdiction, but it is found that he has jurisdiction under some other section of the Code, the mistake is one which does not justify interference with the Magistrate's order, if otherwise good, and if the accused has not been prejudiced thereby.

Kally Prosonno Chatterjee v. Guise, 14 S. W. R. Cr. R. 79.

The High Court cannot interfere under section 434 of the Code of Criminal Procedure (Act XXV of 1861). (*Quære*:—Can it interfere under section 404 of that Code?) in the case of a conviction before a Justice of the Peace under the 53 Geo. III C. 155, S. 105. Such a case falls under section 410 of the Code of Criminal Procedure.

Ameer Khan in re, 15 S. W. R. Cr. R. 60; S. C. 7 B. L. R. 244, 250.

A Judge of the High Court making an order in the original criminal jurisdiction of that Court is not a Court subject to the control of the Court under section 15 of the 24 and 25 Vict. C. 104.

Macdonald & another v. Riddell, 16 S. W. R. Cr. R. 69.

The power of a Magistrate to delegate the receiving of complaints under section 66 B., Code of Criminal Procedure (Act XXV of 1861) is not equivalent to the power of the local Government to invest with local jurisdiction under section 23 D., and no Magistrate can act under Chapter XX who has not been legally invested with local jurisdiction. No order of the Local Government under the latter section can legally have retrospective effect. A plea of want of jurisdiction may be taken in the High Court, though not taken below.

Mussamut Berey v. Neeah Gam, 17 S. W. R. Cr. R. 13.

A Dufflah hill tribe woman having refused to obey the Deputy Commissioner's order directing her to return to her husband's protection, the Commissioner of Assam directed that, in case she persisted, she should be taken across the border and put back into her own country. On a protest by way of appeal against the order of the Deputy Commissioner, the Judicial Commissioner referred the matter to the High Court for orders under Chapter XXIX of the Code of Criminal Procedure (Act XXV of 1861). Held, that this was not a case which could be referred under Chapter XXIX of that Code; that the order of the Deputy Commissioner was a judicial order, not made in a criminal matter, but in a suit for restitution of conjugal rights, and as such, appealable to the Judicial Commissioner, that the proper form of the order in such a case was that the woman should return to her husband and live with him; and that the only way in which such an order could be enforced was by imprisonment of the wife and attachment of her property, or both, under section 200, Act VIII of 1859.

Shaik Oodla & others v. Barkat & others, 18 S. W. R. Cr. R. 7.

Section 434, Code of Criminal Procedure (Act XXV of 18861) gives the High Court no power to interfere in a case where the difference of opinion between the Magistrate and the Judge is as to the credibility of certain witnesses. The Magistrate's order may be an improper one, but it was passed upon legally sufficient evidence and cannot be termed illegal.

Bunkabeharee Sein, petitioner, 18 S. W. R. Cr. R. 23.

There is nothing in section 404, Code of Criminal Procedure (Act XXV of 1861) which obliges the High Court to interfere; and in cases in which it is clear that substantial justice has been done, the Court is not bound and ought not to interfere even if, on some small point of law, the Judge below has made a mistake.

Joychunder Bundopadhya v. Jhoroo Kopalee, 18 S. W. R. Cr. R. 40.

One Magistrate has no authority to set aside the order of another Magistrate.

Rohoman Sirkar & another, petitioners,

Where a Magistrate appointed special constables under section 17, Act V of 1861 on the ground that a murder had occurred, and he was apprehensive that frequent murders

18 S. W. R. Cr. R. 67; S. C. 10 B. L. R. App. 4.

would take place, it was held that his order was illegal, that section referring to cases of unlawful assembly, riot, or disturbance of the peace only; but that as the order was one of a purely executive nature, the High Court had no power to interfere with it. The Magistrate should rather have proceeded under section 15 of the Act, and applied for sanction to an increase in the Police force.

Pannalall Mookerjee, petitioner, 19 S. W. R. Cr. R. 4.

To give a Magistrate jurisdiction to take cognizance of an offence without any complaint under section 68, Code of Criminal Procedure (Act XXV of 1861) there must be an offence committed which is punishable under the Penal Code or under some special Act.

Dhunput Singh, petitioner, 19 S. W. R. Cr. R. 30.

An Assistant Magistrate of a district has no jurisdiction to entertain a case as of his own knowledge under section 68, Code of Criminal Procedure, as he does not fill the character of a Magistrate of a district, or Magistrate in charge of a division of a district. Where a case did not come before an Assistant Magistrate on complaint, or in any other way than by transfer from the Magistrate of the district, who himself initiated the proceedings under section 68, the proceedings of the Magistrate were declared to have been without jurisdiction.

Reg. v. Nimchand Mookerjee & another, 20 S. W. R. Cr. R. 41.

In a case tried by jury, the High Court has no power to go into the facts of the case in order to see whether or not the conviction was right, that standing entirely upon the verdict of the jury. The Court has only to consider the facts, in order to see whether the Judge has done his duty in laying the case before the jury for their consideration.

Points out how the Sessions Judge's summing-up to the jury should be dealt with by the High Court, first as regards the law, and then as regards the facts.

Run Bahadoor Singh v. Hurdoyal Singh, 21 S. W. R. Cr. R. 32.

An order passed by an Assistant Magistrate in a case of breach of the peace, under section 530 of the Code of Criminal Procedure (Act X of 1872) was referred to the High Court by the Sessions Judge with a recommendation that the order should be set aside on certain grounds stated, the want of jurisdiction in the Assistant Magistrate not being one of the grounds. The Division Bench before whom that reference came declined to interfere with the order. It was held by another Division Bench before whom the matter was subsequently brought on motion that they were not debarred from entering into the question of the want of jurisdiction; and as the effect of the Assistant Magistrate's order was to prejudice one of the parties, the order, which was admittedly without jurisdiction, was set aside.

Kader Baksh, petitioner, 21 S. W. R. Cr. R. 3.

A Magistrate has no jurisdiction to convict in a case in which the accused is charged, under section 211 of the Penal Code, with having falsely instituted a criminal charge of the offence of dacoity.

Reg. v. Dwarkanath Mullick, 21 S. W. R. Cr. R. 45.

The High Court declined to interfere with a conviction by a Bench of Magistrates which appeared good, on the statement of the Magistrate that the case was one in which the Bench had no jurisdiction according to rules prepared by the Magistrate and approved of by the Local Government, which rules were not before the High Court.

Grischunder Roy & others, petitioners, 21 S. W. R. Cr. R. 46.

Under section 70 of the Code of Criminal Procedure, no sentence or order of a Criminal Court is liable to be set aside merely on the ground that the investigation, inquiry, or trial was held in a wrong district or sessions division, unless it is proved, or appears, that the accused person was actually prejudiced in his defence.

Sonatun Dass v. Gooroo Churn Dewan, 21 S. W. R. Cr. R. 88.

The High Court declined under Act X of 1872, section 70 to interfere with an order in a case under section 530, in which the objection as to jurisdiction was not seriously taken in the Court below, and in which the petitioner failed in his application to the High Court to show that he had been in any way prejudiced.

Per AINSLIE, J. :—The power given to the High Court under sections 294 and 297, Code of Criminal Procedure, of enquiring into the irregularity of proceedings and setting aside proceedings which are irregular, is a limited one, and is to be applied only in cases in which it appears that there had been a material error in such judicial proceedings, and in considering what a material error is, the Court is bound to be guided by the other parts of the Code, such as sections 70, 283 and 297.

Kali Narain Roy Chowdhry v. Abdool Guffoor Khan, 22 S. W. R. Cr. R. 24.

Case in which the High Court in exercise of the jurisdiction given to it by section 15 of the Charter Act issued a rule *nisi* at the instance of the party aggrieved, calling upon the opposite party to show cause why an order made by a Magistrate which was complained of should not be set aside for want of jurisdiction, although the matter had already been brought to the notice of the Court on a reference made by the Sessions Judge. Two previous cases on the point discussed.

Chunder Coomar Roy & others v. Omeschunder Mojoomdar, 22 S. W. S. Cr. R. 78.

The fact that an order of the Magistrate is not a judicial proceeding, and therefore not one which the High Court can revise under section 297 of the Code of Criminal Procedure, (Act X of 1872) does not have the effect of removing the Magistrate from the general superintendence of that Court under section 15 of its Charter Act.

Ghumundee Singh, petitioner, 23 S. W. R. Cr. R. 30.

The High Court declined, on a reference under section 296, Code of Criminal Procedure (Act X of 1872) to interfere with the order of a Magistrate rejecting an application for the restitution of property which had been sold some years ago under the provisions of sections 183 and 184 of the Code. The proper mode of raising the question as to the propriety of the order would be by a regular suit against the Government.

Sheikh Mohamed Golab v. Mohabeer Singh & others, 23 S. W. R. Cr. R. 34.

A case of assault tried by the Assistant Magistrate of Purneah, was appealed to the Sessions Judge of that district, who ordered an enquiry and found that the assault had been committed in Maldah, and thereupon released the accused as the Magistrate of Purneah had no jurisdiction:—Held, that the Judge had no jurisdiction under section 70, Criminal Procedure Code (Act X of 1872), to make such an order, the accused not having been prejudiced in his defence; and further, that he ought not to have ordered the enquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused,—section 282, Criminal Procedure Code.

Khajah Noorul Hossein alias Khajah Waheed Jan v. Tonnerre, 24 S. W. R. Cr. R. 26.

Act X of 1872, section 297 allows of interference, on the part of the High Court in any case where there has been a material error in a judicial proceeding and not merely (as did the old Code, XXV of 1861, section 404) where there has been an error on a point of law in the decision of a case.

Huri Pershad, petitioner, 24 S. W. R. Cr. R. 60.

Omission to take very material evidence profferred by the accused, was held to have prejudiced him, and to afford ground for the High Court's interference under the Code of Criminal Procedure (Act X of 1872), section 297. Where the Appellate Court did not fix a reasonable time for the appearance of the appellant or his Counsel as required by section 278, the error was held to invalidate its proceedings. A decision given on evidence which was in some parts discrepant, and about the credibility of which there might be considerable question, would not, even if the High Court thought the evidence doubtful, be a material error in a judicial proceeding within the meaning of Act X of 1872, section 297.

Gopeekishen Gossain, petitioner, 24 S. W. R. Cr. R. 79.

If upon a notice being served on a party under Act III (B.C.) of 1864, section 73, he does not choose to clear away the jungle referred to, it is open to the Magistrate, as Commissioner of the Municipality, either to clear the jungle at the expense of the party in possession, or to proceed under section 67 and inflict a fine.

Reg. v. Sham Soonder Dass, 25 S. W. R. Cr. R. 18.

Where a Deputy Commissioner's order requires, under Act X of 1872, section 36, the sanction of the Sessions Judge, the High Court has no jurisdiction to entertain an appeal from it until so sanctioned.

Reg. v. Abdul Ali & others, 25 S. W. R. Cr. R. 45.

A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised where the charge of theft which was based on the loss should be tried at Tipperah or Chittagong: Held, that the journey was not broken by the halt, and that, under section 67, Criminal Procedure Code (Act X of 1872), the case could be tried at Chittagong.

Mathuranath Chuckerbutty in re, 9 B. L. R. 354; S. C. 17 S. W. R. Cr. R. 55.

Where a Magistrate had adjourned an enquiry for a cause not contemplated by section 224 of the Criminal Procedure Code (Act XXV of 1861), the High Court, in exercise of the power of superintendence, conferred by section 15 of 24 and 25 Vict. C. 104, set aside the order of remand.

Reg. v. Amir Khan & others, 9 B. L. R. 36; S. C. 17 S. W. R. Cr. R. 15.

Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Court of Sessions, Patna, had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the district of Patna in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction also, because the prisoner had sent money from Calcutta to Patna by hundis, and, until that money reached its destination the sending continued on the part of the prisoner.

Abdool Kadir Khan v. The Magistrate of Purneah, 11 B. L. R. App. 8; S. C. 20 S. W. R. Cr. R. 23.

The High Court has jurisdiction, having regard to sections 297 and 64 of the Code of Criminal Procedure (Act X of 1872) to take cognizance of, and revise the proceedings of a Magistrate while they are in an interlocutory state of pending investigation, and may suspend such proceedings without having the record before it; it may also in such a case order bail to be taken from the person accused.

Reg. v. Jackson, 13 B. L. R. 474; S. C. 22 S. W. R. Cr. R. 20.

A British-born European soldier in a regiment stationed at Hazaribagh was committed by the Deputy Commissioner of that place to the High Court on a charge of the murder of a comrade. Upon an application to have the commitment quashed and the prisoner handed over to the Military authorities in accordance with Regulation XX of 1825, it was held that the provisions of Regulation XX of 1825, as to the course to be taken in dealing with European British subjects who have committed offences were rescinded in Hazaribagh by Regulation XIII of 1833, Section 3, as being rules for the administration of criminal justice within the meaning of that section. Assuming the Regulation was in force, Held, that, 4 Geo. IV, C. 81 and Regulation XX of 1825, though they gave jurisdiction to the Military authorities in certain cases, did not wholly exclude the jurisdiction of the civil as opposed to the Military Courts, and that in as much as the proceedings before the Deputy Commissioner had been taken at the request of the Military authorities and assented to by them, such proceedings were not void, and the commitment was valid.

Reg. v. Piran alias Gunzai alias Kurreemun, 13 B. L. R. App. 4; S. C. 21 S. W. R. Cr. R. 66

Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains,—Held, that the Magistrate of Howrah had no juris-

diction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party.

Reg. v. Meares, 14 B. L. R. 106 F. B. S. C. 22 S. W. R. Cr. R. 54.

An European British subject in the Mofussil was convicted by a Magistrate under the provisions of Chapter VII of Act X of 1872 (Criminal Procedure Code). He appealed to the High Court on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, in as much as the Governor-General in Council had not the power under 24 and 25 Vict. C. 67 to subject an European British subject to any jurisdiction other than that of the High Court, and therefore the provisions of Act X of 1872 under which the prisoner had been tried were *ultra vires* and illegal. Held, that the jurisdiction of the High Court as given by the Letters Patent, is subject to the legislative powers of the Governor-General in Council, and therefore the Magistrate had jurisdiction to try the case.

Juggut Chunder Chuckerbutty in re, 2 I. L. R. Calc. 110.

Per MARKBY, J. :—Sections 294 and 297, Act X of 1872 (Criminal Procedure Code) do not debar the High Court from interfering where in cases requiring the exercise of discretion, it appears upon the face of the proceedings that the Magistrate has exercised no discretion at all or has exercised his discretion in a manner wholly unreasonable.

Per MITTER, J. :—Under section 297, the High Court has the power of interfering with judgments, sentences, or orders of Courts subordinate to it, if there has been a material error in any judicial proceeding of such Courts, meaning thereby any error appearing on the face of a judicial proceeding resulting in an unjust order.

Pursooram Borooah in re, 2 I. L. R. Calc. 117; S. C. 25 S. W. R. Cr. R. 52.

The petitioner had been convicted by Mr. Carnegy, the Assistant Commissioner of Kamroop, in the exercise of a summary jurisdiction, under section 222 of Act X of 1872 (Criminal Procedure Code). This officer was, in the year 1872 in charge of the Jorehaut Division in the district of Seebsaugor, "with first-class powers and powers under section 222" of the Act. In 1874 he proceeded on furlough to England, and, on his return in 1875, was posted to the district of Kamroop, and invested with the powers of a Magistrate of the first class.

Held, that section 56 of Act X of 1872 did not apply, and that Mr. Carnegy had no summary jurisdiction in Kamroop.

Per MARKBY, J. :—On the ground that, by the terms in which the Government had conferred that jurisdiction on Mr. Carnegy, it had in effect "directed" within the meaning of section 56 of Act X of 1872, that he should not exercise that jurisdiction anywhere but in Seebsaugor.

Per MITTER, J. :—On the ground, that the office to which Mr. Carnegy was appointed in Kamroop was not equal to or higher than that which he had held in Seebsaugor.

Quære per MARKBY, J. :—Whether the posting of Mr. Carnegy to Kamroop, after his return from furlough, was a transfer from Seebsaugor within the meaning of section 56 of Act X of 1872.

Empress v. Burah & Book Singh, 3 I. L. R. Calc. 63 F. B.; S. C. 1 C. L. R. F. B. 161.

By Act XXII of 1869, certain districts were removed from the jurisdiction of the High Court, and by section 5 the administration of civil and criminal justice was vested in such officers as the Lieutenant-Governor of Bengal should appoint. By section 9, the Lieutenant-Governor was empowered to extend all or any of the provisions of the Act to the Cossyah and Jynteeah hills. By a notification in the *Calcutta Gazette* of 4th October 1871, the Lieutenant-Governor extended the provisions of the Act to the Cossyah and Jynteeah hills, and directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district. The two prisoners were tried for murder in April 1876, and were on conviction sentenced by the Chief Commissioner of Assam to transportation for life. On appeal by the prisoners to the High Court, held by the majority of a Full Bench (GARTH, C. J., MACPHERSON and PONTIFEX, JJ. *dissenting*) that the High Court had jurisdiction to entertain the appeal, and such jurisdiction was not taken away by Act XXII of 1869.

Per Curiam:—The Governor-General in Council had power by legislation to remove the districts from the jurisdiction of the High Court.

Per JACKSON, AINSLIE, and MARKBY, JJ. (KEMP, J. concurring). The Governor-General in Council had no power to delegate his legislative functions to the Lieutenant-Governor of Bengal in the way he had done in Act XXII of 1869. The power of delegation cannot be considered as validated by any long course of practice, nor as sanctioned by the tacit recognition of Parliament: Act XXII of 1869 is therefore so far invalid.

Per MACPHERSON, J. (PONTIFEX, J. concurring):—Such delegation is nowhere expressly prohibited, and does not bring the Act under any of the restrictive provisions of the Indian Councils Act.

Per GARTH, C. J. and MACPHERSON, J. (PONTIFEX, J. concurring):—The power of delegation now questioned had been exercised in many cases for a series of years previous to the passing of the Indian Councils Act, and that Act (the framers of which must have been cognizant of such course of practice) must be taken as impliedly approving of, and sanctioning such practice, which it would otherwise have declared illegal.

Per GARTH, C. J., JACKSON, MARKBY and AINSLIE, JJ. (KEMP, J. concurring):—The High Court has power to question the validity of the legislative Acts of the Governor-General in Council.

Per MACPHERSON, J. (PONTIFEX, J. concurring):—The High Court has no such power if satisfied that the Act is not within the prohibition of the Indian Councils Act.

Empress v. Rajcoomar Sing & another, 3 I. L. R. Calc. 573; S. C. 2 C. L. R. 62.

Held, *per* AINSLIE and MCDONELL, JJ. that the High Court, in the exercise of its powers of extraordinary jurisdiction cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore where parties which had been convicted of riot by a Magistrate, and who having a right of appeal to the Sessions Court instead of doing so, moved the High Court under Clause 15 of the Charter, the Court would not interfere until that remedy had been resorted to.

Sufferuddin v. Ibrahim, 3 I. L. R. Calc. 754; S. C. 2 C. L. R. 263.

A Bench of Magistrates has no power to deal with cases coming under section 530 of the Criminal Procedure Code (Act X of 1872). A Bench may be empowered under section 50 of the Code "to try such cases or such class of cases only and within such limits as the Government may direct." The definition of the term "trial" shows that it refers to trials for offences, and these do not come within the miscellaneous matters mentioned in section 530.

Empress v. Burah, 4 I. L. R. Calc. P. C. 172.

By the terms of the Act 24 and 25 Vict. C. 104, the exercise of jurisdiction in any part of Her Majesty's Indian Territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor-General in Council.

An exercise of legislative authority by the Governor-General in Council, whereby any place or territory is removed from the jurisdiction of the High Courts, is one expressly contemplated by the Statute 24 and 25 Vict. C. 104, and by the Letters Patent issued under that Statute.

By the 9th section of Act XXII of 1869, passed by the Governor-General of India in Council; the Lieutenant-Governor of Bengal was empowered, from time to time, to extend *mutatis mutandis*, to the Jaintia, Naga, and Khasi Hills, the provisions contained in other sections of the Act, whereby the administration of civil and criminal justice within the district called the Garo hills was, from a date to be fixed by the said Lieutenant-Governor, to be withdrawn from the jurisdiction of the Courts of Civil and Criminal Judicature constituted by the Regulations of the Bengal Code and the Acts of the Legislature of British India, and to be vested in such officers as the Lieutenant-Governor might appoint. Held, by a majority of the Calcutta High Court that as the Indian Legislature was to be regarded as an agent or delegate, acting under a mandate from the Imperial Parliament, which must in all cases be executed directly by itself, the above provisions purporting to authorize the Lieutenant-Governor of Bengal to extend Act XXII of 1869 to the Jaintia, Naga, and Khasi hills, since they involved a delegation of legislative power, were void and of no effect.

Held by the Judicial Committee of the Privy Council, that the decision of the majority of the High Court was erroneous and rested on a mistaken view of the powers of the Indian Legislature. That Legislature has powers expressly limited by the Act of the Parliament which created it, but has, when acting within those limits, plenary powers of legislation as large and of the same nature as those of Parliament itself.

When plenary powers of legislation exist as to particular subjects, whether in an Imperial or Provincial Legislature, they may be well exercised either absolutely or conditionally. Legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is not uncommon, and, in many circumstances, may be highly convenient.

Empress v. Tsit Ooe, 4 I. L. R. Calc. 667.

The special Court of British Burma has power to entertain an appea from a sentence of death or other sentence passed by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge, under the powers conferred by section 64 of

the Code of Criminal Procedure (Act X of 1872) and section 35 of Act XVII of 1875. (The Burma Courts Act), the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner.

Empress v. Maguire, 5 I. L. R. Calc. 124; S. C. 4 C. L. R. 432.

Section 101 of the Mutiny Act does not deprive the civil (as opposed to Military) Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a Military trial being held.

Chundro Marwari v. Mohamed Eshak, 6 I. L. R. Calc. 476.

An Assistant Magistrate convicted an accused on the 12th August, and by an order of even date, such Magistrate was invested with power to act as a Magistrate of the 1st class, although the fact, that he had been so invested with full powers, was not communicated to him until the 23rd idem. The accused appealed to the District Magistrate and was acquitted. On motion made to the High Court to set aside the acquittal, on the ground that, after the date of the order of the Lieutenant-Governor investing the Assistant Magistrate with further powers, no appeal lay to the District Magistrate, held, that even supposing the Lieutenant-Governor's order conferred first-class powers upon the Assistant Magistrate from the moment it was made, it must be shown before the District Magistrate's decision could be set aside, that the order of the Lieutenant-Governor was signed before the conviction.

Quære:—Whether an order investing a Magistrate with 1st Class powers, is of any force, or amounts to an authority to exercise such powers, until the order has been officially communicated to the Magistrate.

Empress v. Surjanarain Dass & others, 6 I. L. R. Calc. 88.

Where an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.

Hursee Mahapatro v. Dinobundo Patro, 7 I. L. R. Calc. 523; S. C. 9 C. L. R. 93.

A British subject residing in Midnapore, in Bengal, was charged before the Maharajah of Mohurbhunj with having committed the offence of defamation in Mohurbhunj in the Tributary Mehals. On an application made by the accused to the Magistrate of Midnapore, objecting to be tried by the Raja of Mohurbhunj, the Commissioner of Cuttack, who was also Superintendent of the Tributary Mehals directed that the case should be transferred to Midnapore and tried by the Magistrate of that district who had the power of an Assistant Superintendent of the Tributary Mehals. The accused, while being tried, moved the High Court to set aside the proceedings at Midnapore, on the ground that the offence not having been committed within the district, the

Magistrate was acting without jurisdiction. Held, that the proceedings were without jurisdiction.

Per CUNNINGHAM, J. :—The Tributary Mehals are now, as they were in 1874, a portion of British India, which the Government of India has been pleased to exempt from the ordinary law and jurisdiction of the Courts, and to govern by means of special officials and enactments. Whatever may be the powers of Government as to Mohurbhunj, those powers do not extend to empowering the legally constituted tribunals of a British district to follow in that district, and in the case of residents in it, any procedure, and to exercise any other jurisdiction than that created by the law.

Per PRINSEP, J. :—The Territory of Mohurbhunj is a part of British India, but at present not subject to any laws not specially extended to it. The Tributary Mehals being British India, and being excluded from the operation of all the laws in force in British India, unless expressly extended to them, the orders of Government conferring powers on particular officers over criminal offences committed within those mehals are *ultra vires*.

Empress v. Keshub Mohajan & others & Empress v. Udit Prasad, 8 I. L. R. Calc. 985.

The prisoners, residents of the District of Singhbhum, a district in British India, were convicted, under section 331 of the Penal Code, at Singhbhum, of an offence committed in Mohurbhunj.

Per GARTH, C. J., PONTIFEX and MORRIS, JJ. :—The territory of Mohurbhunj is not within the limits of British India; but under the provisions of section 9 of Act XXI of 1879, a conviction in British India for an offence committed without the limits of British India, is good.

Per MITTER, J. :—Mohurbhunj is within the limits of British India; but seeing that the Tributary mehals constitute a "district" within the meaning of the Criminal Procedure Code, (Act X of 1872) and that the Superintendent of these mehals has been vested with the powers of a Sessions Judge under an order of the Government of India, a conviction under the Penal Code (having regard to the provisions of section 70 of the Criminal Procedure Code) ought not to be set aside.

Per PRINSEP, J. :—Mohurbhunj is within the limits of British India; but the Acts which extend to British India do not extend to Mohurbhunj. The territory have been expressly placed beyond the ordinary legislation, the law in force in British India cannot come into operation there until this exemption has been removed.

Abdool Kadir & others in re, 3 C. L. R. 44.

A Magistrate should not split up an offence for the purpose of giving himself jurisdiction. If he does so, and the offence is not triable summarily, the proceedings are void, under section 34 of the Code of Criminal Procedure (Act X of 1872).

Mussamut Surgee in re, 3 C. L. R. 281.

On the 22nd of May 1878, a Deputy Magistrate, invested with 3rd Class powers only, sentenced an accused person to 3 months' imprisonment under section 417 of the Penal Code, thus exercising 2nd Class powers. On appeal the Magistrate, on the 18th June, annulled the sentence and directed a new trial, under section 284 of the Code of Criminal Procedure (Act X

of 1872). On the 26th June the Government issued a notification, investing the Deputy Magistrate with 2nd Class powers, to take effect from the 25th March to the 31st May 1878. Held, that the notification did not render the Magistrate's order illegal, as the Deputy Magistrate had no jurisdiction to exercise 2nd Class powers on the 22nd May.

Reg. v. Gur Baksh & others, 1 I. L. All. 193.

Section 471, Act X of 1872, does not deprive the Court, which possesses the power of trying an offence mentioned in sections 467, 468, and 469, of the power of trying it when committed before itself.

Empress v. Sarmukh Singh, 2 I. L. R. All. 218.

Held, (STUART, C. J. dissenting) that a native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian Army, who committed a murder in Cyprus while on service in such army, and who was accused of such offence at Agra, might, under section 9 of Act XI of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State," in reference to native Indian subjects of Her Majesty, within the meaning of that Act.

Per STUART, C. J. :—The power of the Governor-General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate who had refused to inquire into a charge of murder on the ground that he had no jurisdiction, to inquire into such charge, considering that the Magistrate had jurisdiction to make such inquiry. The Magistrate inquired into the charge and committed the accused person for trial. The Court of Session convicted the accused person on the charge and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court.

Held, *per* STUART, C. J., SPANKIE, J. and OLDFIELD, J. that, in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction.

Empress v. Anand Sarup & others, 3 I. L. R. All. 563.

Mr. M. was appointed by the Local Government, under section 37 of Act X of 1872, a Magistrate of the first class, under the designation of Joint-Magistrate, in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district of Meerut during the absence of Mr. F. or until further orders. While so officiating, he was appointed by a Government Notification, dated the 10th July 1880, to officiate as Magistrate and Collector of Gorakhpur "on being relieved by Mr. F." He was relieved by Mr. F. in the forenoon of the 23rd July 1880; and in the afternoon of that day, under the verbal order of Mr. F. he proceeded to complete a criminal case which he had commenced to try while officiating as Magistrate of the district of Meerut. All the evidence in this case had been recorded, and it only remained to pass judgment. Mr. M. accordingly passed judgment in this case, and sentenced the accused persons to various

terms of imprisonment. Held, (SPANKIE, J. dissenting) that Mr. M. retained his jurisdiction in the district of Meerut so long as he stood appointed by the Government to that district and no longer, and the effect of the order of the 10th July 1880, was to transfer him from the moment he was relieved by Mr. F. of the office of Magistrate of that district, and from that moment he no longer stood appointed to that district and could exercise no jurisdiction therein as a Magistrate of the first class; and that therefore the convictions of such accused persons had been properly quashed on the ground that Mr. M. had no jurisdiction.

Reg. v. Aman & Nund Kishore, 5 N. W. P. Rep. All. 130.

The High Court as a Court of reference can only deal with cases in which a sentence of death has been passed.

Reg. v. Oomrao Singh & others, 3 N. W. P. Rep. All. 317.

A Magistrate not being the Magistrate of the District, nor in charge of a division of the district, is not competent to issue warrants for the arrest of persons against whom no complaint has been preferred to him, nor any charge made by the police.

Empress v. Achi, 2 I. L. R. Mad. 161.

Madras Act III of 1865 declared every Magistrate in the Madras Presidency authorized to take cognizance of every offence committed against any special or local law then in force in the said Presidency, notwithstanding any provision to the contrary in any Act or Regulation then existing, and also of any offence against any special or local law which might thereafter be passed unless such law should make the offences to which it might refer punishable by some other authorities therein specially mentioned. The effect of this Act was to remove the restrictions imposed by special or local laws theretofore passed, and to enable Magistrates within the limits of their ordinary powers to deal with offences punishable under any such special or local law notwithstanding the special or local law indicated a particular tribunal as alone competent to try such offences, and to confer upon them jurisdiction also in the case of any special or local laws that might be passed after the enactment of Act III of 1865, unless jurisdiction was in any such later law specially conferred upon some other authority. Section 8 of the subsequent enactment, Act X of 1872 (The Criminal Procedure Code), limited the jurisdiction of Sub-Magistrates over offences punishable under special and local laws, a third-class Magistrate's jurisdiction being restricted to the trial of offences punishable under such laws with less than one year's imprisonment, while a second-class Magistrate's jurisdiction was similarly restricted to the trial of offences punishable with less than three years' imprisonment. Act XVI of 1874, while repealing Act III of 1865, left unaffected the jurisdiction of the Sub-Magistrate under that Act so far as it still remained in existence as limited by the provisions of section 8 of Act X of 1872 (Criminal Procedure Code).

Reg. v. Pukella Krishnama & others 5 I. L. R. Mad. 230.

A village Magistrate has authority to issue a summons to persons within, but not without, the local area of his jurisdiction whose attendance may be required in cases which he is empowered to try.

Empress v. Dossaji Gulam Husein, 3. I. L. R. Bom. 334.

The High Court at Bombay has jurisdiction to try a prisoner accused of having committed murder at Zanzibar, and sent by the British Consul at Zanzibar for trial to Bombay.

Empress v. Maganlal, 6 I. L. R. Bom. 622.

A Native Indian subject of Her Majesty committed an offence, (*viz.*, theft in a dwelling-house) in the territory of a Native State in alliance with Her Majesty, and was discovered in the territory of another Native State in alliance with Her Majesty, and from there brought down or came of his own accord to Ahmedabad. A certificate was granted by the Political Agent that the offence ought, in his opinion, to be inquired into in British India. At Ahmedabad a preliminary inquiry was held by a Magistrate, who committed the accused for trial by the Court of Session. Held, that the Session Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under section 9 of the Foreign Jurisdiction and Extradition Act, XXI of 1879, for when the accused was brought from foreign territory to Ahmedabad he was "found" at a place in British India within the meaning of the section. The expression "was found" used in this section must be taken to mean not where a person is discovered, but where he is actually present.

Reg. v. Malony; Reg. v. Jones, 1 Mad. Rep. 193.

The drunkenness of a guard or underguard in charge of a railway-train or any part thereof is an offence included in section 35 of Act XVIII of 1862; but the High Court has no jurisdiction to try a prisoner charged with such an offence where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras.

Reg. v. Watkins, 2 Mad. Rep. 444.

The defendant, a European British subject, was charged with having committed three offences at Bangalore punishable under the Penal Code. Held, that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that, Bangalore being within the territories of the Maharajah of Mysore, a Native Prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore.

Evans & 2 others, prisoners, 2 Mad. Rep. 473.

The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (No. I of 1859).

Proceedings of 23rd Nov. 1868, 4 Mad. Rep. Rul. 21.

The only acts or omissions over which a Magistrate has jurisdiction under Act I of 1858 are those specified in the 1st section. Cases under section 6 of the Act are not cognizable by a Magistrate.

Proceedings of 27th Nov. 1871, 6 Mad. Rep. Rul. 43.

An objection was taken before the Session Judge in the hearing of an appeal that the Head Assistant Magistrate had no jurisdiction to try the case, he having a distinct local jurisdiction which did not include the town where the offence was committed. It appeared that the Head Assistant Magistrate had received general instructions from the Magistrate of the district, as a temporary arrangement, to take up criminal cases arising within the limits of the said town, which was not within his division. Held, upon these facts, that the Head Assistant Magistrate had no jurisdiction.

Proceedings of 1st May 1872, 7 Mad. Rep. Rul. 5.

When the evidence upon which a prisoner is convicted by a subordinate tribunal of an offence within its jurisdiction discloses an offence of a graver character without the jurisdiction of that tribunal, the High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver. Whether it will do so, or not, is a question not of law, but of expediency on the facts of the particular case.

Proceedings of 4th June, 1872. 7 Mad. Rep. Rul. 6.

The jurisdiction conferred on Magistrates in the Madras Presidency by Madras Act III of 1865, is not ousted by the Schedule to the Code of Criminal Procedure (Act XXV of 1861) as amended by Act VIII of 1869.

Reg. v. Mir Saheb Kassamia & another, 1 Bom. Rep. 100.

The repealing section of Act XVIII of 1862 does not affect the power of a Subordinate Magistrate under section 13 of Act III of 1857.

Reg. v. Rama bin Gopal, 1 Bom. Rep. 107.

The consent of the Governor-General in Council, required by section 5 of Act XXIX of 1845 to the appointment of a Joint Judge, must be given before the appointment is made. The doctrine of subsequent ratification does not apply in a criminal case.

Reg. v. Vyankantsvami, 2 Bom. Rep. 106.

Held, that there was nothing in the manner in which the district of North Canárá was detached from the Madras Presidency and annexed to the Presidency of Bombay, to prevent the Code of Criminal Procedure, (Act XXV of 1861) from operating therein, as if it had always formed a part of the Presidency of Bombay or to deprive a convict found guilty by the Session Judge of the district, on the 18th of September 1862, of the right of appeal, which he then would have had to the High Court, by virtue of section 408 of the Criminal Procedure Code, and of 24 and 25 Vict. C. 104 and the Letters Patent (of 1862) clause 26.

The power given by 16 and 17 Vict. C. 95 to alter the distribution of territories among the Presidencies, was vested by 21 and 22 Vict. C. 106 in the Secretary of State for India, by whose order of the 28th of February 1862, North Canara was annexed the new arrangement of territory to take effect from such date as the Governor-General in India in Council, should,

by proclamation, appoint for the purposes of the India Councils Act, 1861; which Act has reference solely to the constitution and functions of the Legislative Councils, and does not purport to affect in any way the exercise of the general powers of Government, or the administration of justice and the jurisdiction and authority of the Courts of Justice:—the annexation for these purposes being made by the Secretary of State and not being qualified or controlled by the proviso in section 47 of 24 and 25 Vict. C. 67, which cannot be construed as a substantive enactment, or as qualifying or restraining the power vested in the Secretary of State.

Meaning of the term "Sudder Court" as defined by Act VIII of 1842 and by section 19 of the Criminal Procedure Code.

Giving an appeal to the High Court, under the Criminal Procedure Code, is not subjecting a district to the Regulations, within the meaning of Regulation II of 1827. Section 16, cl. 2, Bombay, Act III of 1863 observed upon. Analogous cases of ceded or conquered territory in America.

Reg. v. Malharji bin Nauloji, 3 Bom. Rep. Crown Cases, 36.

Held, that a Subordinate Magistrate has no jurisdiction to impose a penalty for breach of a rule made by Town Commissioners under Act XXVI of 1850, section 7, cl. 5.

Reg. v. Kasamji valad Himinji Mhaskar, 5 Bom. Rep. Crown Cases, 6.

Held, that a Magistrate F. P. alone has jurisdiction to convict of an offence under section 13 of Act XIX of 1838 (Registry).

Reg. v. Mavji Dayal; Reg. v. Kalidas Keval, 5 Bom. Rep. Crown Cases, 10.

The Managing Committee of Municipal Commissioners appointed under Act XXVI of 1850 have no power to try and convict persons for alleged breaches of rules made in pursuance of that Act. The power to inflict fines for such offences is by section 10 vested in the Magistrate.

Reg. v. Vithal Lakshuman, 5 Bom. Rep. Crown Cases, 13.

Held, that it was beyond the power of a Collector to issue an order prohibiting the receiving of transit duties for the Holkar's Government in British Territory.

Reg. v. Tunga Tuka, 5 Bom. Rep. Crown Cases, 14.

The word "Magistrate" in section 62 of Act XXII of 1855 includes a Subordinate Magistrate: such Magistrate has, therefore, power to try the master of a vessel for an offence committed against section 46 of that Act.

Reg. v. Gobinda bin Babaji, 5 Bom. Rep. Crown Cases, 15.

The order of a Session Judge to quash proceedings held before a Magistrate F. P. annulled as having been made without jurisdiction. Comments by a Magistrate F. P. on the proceedings of the Session Court, disapproved of.

Reg. v. Gopal Lakshuman & Ganpat Babaji, 5 Bom. Rep. Crown Cases, 25.

Where the Session Judge on appeal reversed a conviction passed by a Magistrate F. P. of an offence under section 182 of the Penal Code (which the Magistrate F. P. was competent to try), and directed the Magistrate F. P. to institute proceedings against the accused under section 211, considering that, on the complaint which had been made to him, the Magistrate F. P. was bound to institute proceedings under the latter section:—The High Court reversed that part of the order of the Session Judge which directed the Magistrate F. P. to institute proceedings, as the case did not fall within section 435 of the Criminal Procedure Code (Act XXV of 1861), and there was no provision of law giving the Judge jurisdiction to make such an order.

Reg. v. Dixon, 6 Bom. Rep. Crown Cases, 14.

A Magistrate being also a Justice of the Peace has no jurisdiction to try a British born subject under the Penal Code. His jurisdiction in the trial of such subjects is governed and limited by 53 Geo. III, C. 155, section 105 and Act VII of 1853, neither of which gives him power to award imprisonment in default of payment of a fine.

Shankar Abaji Hoshing, petitioner, 6 Bom. Rep. Crown Cases, 69.

A Subordinate Magistrate, 2nd Class, who is not specially vested with powers under section 66A of the amended Code of Criminal Procedure, has no jurisdiction to try a case on the report of a Police Officer, or on a complaint directly preferred to him.

Reg. v. Reay, 7 Bom. Rep. Crown Cases, 6.

Although the old East India Company had power, under the Charters of Charles II to make laws affecting British-born subjects, yet the power ceased in A. D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3rd and 4th Wm. IV, C. 123, (with the exception of a limited power of legislating as regarded the local limits of the Presidency Town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found.

Semble that neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3rd and 4th Wm. IV, C. 123. With the exception of offences made punishable, by the 53rd Geo. III, C. 155, S. 105 by Justices of the Peace, the Recorder's Court had by virtue of the 37th Geo. III, C. 142, S. 10 *exclusive* criminal jurisdiction over British-born subjects throughout the Bombay Presidency; and the same *exclusive* jurisdiction was continued to the late Supreme Court and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts of the Government of India. The Bombay District Police Act (No. VII of 1867), passed by the Governor of Bombay in Council for making laws and Regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the Mofussil, being also Justices of the Peace, over British-born subjects, as it thereby affects the Acts of Parliament under which the High Court is constituted, and interferes with the crimi-

nal jurisdiction which that Court possesses over British-born subjects in the Mofussil, which jurisdiction is exclusive except in so far as it is limited by Stat. 53, Geo. III, C. 155, S. 105, and certain subsequent Acts of the Goverment of India.

Reg. v. Shivbasapa 7 Bom. Rep. Crown Cases, 73.

A Magistrate F. P. is not immediately subordinate to the Session Court, and, therefore. a Session Judge has no concurrent jurisdiction with the Magistrate of the district, under section 434 of the Code of Criminal Procedure (Act XXV of 1861).

His proper course, if he thinks that an illegal sentence or order has been passed by a Magistrate F. P. is to make a report to the High Court; which will then, if it thinks fit, call for the proceedings under section 404.

Reg. v. Dharmaya, valad Sangapa, 8 Bom. Rep. Crown Cases, 12.

By virtue of the last part of the Schedule headed "offences against other laws," added to the Code of Criminal Procedure by Act VIII of 1869, a Subordinate Magistrate, Second-class, can take cognizance of the offence of a breach of the Municipal rules promulgated under Act XXVI of 1850.

Reg. v. Yenku Bapuji Krishna bin Pandu, & Tukaram Kedari 8 Bom. Rep. Crown Cases, 39.

Municipal Commissioners appointed under Act XXVI of 1850 have not, by that Act, conferred upon them, nor are they entitled to assume, judicial powers with reference to breaches of Rules or Bye-laws made by them under that Act. Reg. *v.* Kalidas Keval (5 Bom. Rep. Crown Cases, 10) approved and followed.

The authority to try offenders against such Rules or Bye-laws is vested in the Magistrates of the country, and Subordinate as well as other Magistrates have jurisdiction to try such offenders.

Reg. *v.* Dharmaya valad Sangapa approved (8 Bom. Rep. Crown Cases, 12).

Rules made under the above Act which purport to give the Managing Committee of such Municipal Commissioners power to try offenders against such Rules, or to levy fines upon them, are *ultra vires* and illegal.

Rules of the Municipalities of Balsad Surat Malcolm Pet, and Ahmedabad referred to and commented on. How far a rule partially *ultra vires* and partially *intra vires* can be enforced, as to the latter portion considered.

Reg. v. Chill, 8 Bom. Rep. Crown Cases, 92.

A European British subject is liable to be tried in the High Court of Bombay for an offence against the Indian Penal Code committed in the territories of a Native Prince in alliance with Government upon charges framed under the Penal Code.

Reg. v. Ahone Akong 9 Bom. Rep. 356.

A person convicted by the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca, of the crime of burglary and sentenced to transportation for ten years, at a place to be appointed by the Governor-General of India in Council, was released from the Ratnagiri Jail on a ticket-of-leave after having been in confinement for more than eight years. At Kareda he committed theft in a dwelling-house before his sentence had expired.

Held, that the Full Power Magistrate at Karwar had jurisdiction to try the convict for the offence of violation of the condition of remission of punishment under section 227, Indian Penal Code.

Albert Mills Company Ld. in re, 9 Bom. Rep. 438.

The High Court has jurisdiction to enforce by mandamus the right of persons duly elected directors of a joint-stock company to exercise the functions of directors of such company, if such rights are interfered with by the company acting through its other directors.

Semble, that the Court will not refuse to interfere by mandamus in such a case, merely because the office of a director is not a permanent office, or because a director can be removed from his office by a special resolution of the shareholders, but in a proper case, will restore him to his legal position. Meaning of the words "casual vacancy" considered.

Reg. v. Lala Shambhu, 10 Bom. Rep. 70.

A Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded to him by an officer in charge of a police station, under section 123 of the Code of Criminal Procedure (Act X of 1872).

Reg. v. Nathalal Pitambar, 10 Bom. Rep. 102.

Section 111 of the Police Act (XIII of 1856) does not give jurisdiction to the High Court, when a case is brought before it on *certiorari*, to enquire whether the Magistrate has come to a correct conclusion as to the guilt or innocence of the prisoner. The object of that section is to limit the objections to a conviction to some substantial meritorious ground, such as want of jurisdiction or the like, and to prevent a conviction from being quashed on a mere error of form or of procedure. But the section does not give the High Court any right to interfere on the ground that the Magistrate has come to a wrong conclusion on the question of the guilt or innocence of the accused person.

Though affidavits may be used to show a want of jurisdiction in a Magistrate, even though such affidavits contradict for this purpose the finding of the Magistrate, they cannot be used as affording materials for reviewing the Magistrate's decision on the merits.

Reg. v. Tukaram Ragho, 12 Bom. Rep. 234.

Where, on appeal from a conviction, by a Subordinate Magistrate, of an offence triable by him, the Magistrate of the district is of opinion that the evidence in the case establishes a graver offence against the accused not triable by the Subordinate Magistrate, Held, that the Magistrate of the district has no power to annul the conviction and sentence under section 284 of the Code of Criminal Procedure (Act X of 1872) but should report the matter for the orders of the High Court.

Reg. v. Ahmudoollah, 2 S. W. R. Cr R. 60.

A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without the British territories in India, provided they amount to an offence under the Penal Code.

Reg. v. Zemindar of Colgong, 1 S. W. R. Cr. R. 12.

A Magistrate is not prohibited from enquiring into any case of apparent injustice and oppression brought before him, even where the injury complained of is of a civil nature, provided he stops his proceedings directly he ascertains the nature of the claim.

Reg. v. Toyluckonath Sircar, 2 S. W. R. Cr. R. 64.

A Joint-Magistrate vested with full powers is not quoad cases instituted before and tried by him, subordinate to the Magistrate; and the latter officer has no power to quash his proceedings or to hear them on appeal.

Tariney Churn Bose v. Municipal Commissioners of Serampore & another, 24 S. W. Cr. R. 25.

A Municipal Commissioner, acting as a Magistrate, may inquire into a charge of the breach of a bye-law and may punish the accused party by inflicting a fine; but the procedure to be followed is that of the Code of Criminal Procedure (Act X of 1872), which does not contemplate a proceeding against an absent party *ex-parte*.

Reg. v. Kandakora, 1 I.L. R. Mad. 223.

The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws thereby given to them.

Proceedings of 21st Nov. 1870, 6 Mad. Rep. Rul. 3.

The Joint-Magistrate of Tellicherry has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore.

Narayanasami Ayyar, petitioner, 7 Mad Rep. 182.

The Courts of the Head Assistant Magistrate and of the Deputy Magistrate, have jurisdiction to try a District Munsif on charges of extortion in the course of the exercise of his judicial functions. The Sessions Judge is a proper person to sanction the prosecution.

By INNES, J. :—The rule, (laid down in section 8, Reg. VI of 1816) requiring the committal of such cases to the Court of Session, has been impliedly, though not expressly repealed.

Proceedings of 24th March 1873, 7 Mad. Rep. Rul. 17.

With the exception of cases triable by the Court of Session exclusively, a Court cannot try any offence described in sections 467, 468 and 469 of the Code of Criminal Procedure (Act X of 1872) when committed before itself.

Reg. v. Keru bin Ramshet et al. 5. Bom. Rep. Crown Cases, 100.

Bombay Act VII of 1867, section 31, became at once operative in all places where a Magistrate was resident, without having been specifically extended thereto by Government notification.

Empress v. Keshub Mohajan, 11 C. L. R. 241.

The territory of Mohurbhunj is not within British India.

Ward, petitioner. Weir, 9.

The Judicial Commissioner of Mysore has not jurisdiction either as a Court, or as a Sessions Court, over European British subjects being Christians.

A Justice of the Peace in Mysore has no authority to commit such persons for trial to any Court other than the High Court of Madras.

In the absence of an express notification of the Governor General as to the Court to which European British subjects should be committed, when charged with offences not punishable with death or transportation for life, a commitment to the High Court of Madras will presumably be a good commitment.

Proceedings of 17th May, 1865. Weir, 12.

An offence may be punishable both under the Penal Code and a Special Law.

Proceedings of 1st April, 1880. Weir, 232.

Where a Subordinate Magistrate tried an offence committed beyond the local limits of what was regarded as his jurisdiction, it was held that as a Magistrate in the Division in which the offence occurred and as a Magistrate whose powers had not been formally limited to any particular portion of the Division, he had jurisdiction to try the case.

Paritala Venkaiya & another, accused. Weir, 232.

Powers vested by Government in a class of Magistrates held not to be interrupted or suspended by an order of Government passed under a misapprehension, and recalled as soon as perceived to be erroneous.

Proceedings of 22nd Feb. 1879. Weir, 248.

Foreign State.—Question of jurisdiction (Criminal) in relation to, discussed. A conviction of mischief in respect of an animal stolen from foreign territory upheld.

Empress v. Hurro Kole, 9 I. L. R. Calc. 288.

The High Court has no power, either by way of appeal or revision, to interfere with a sentence passed by the Superintendent of the Tributary Mehals when exercising jurisdiction over offences committed in Mohurbunj, a place not situated within the limits of British India. Empress *v.* Keshub Mahajun (I. L. R. 8 Calc. 985) and Hursee Mahapatro *v.* Dinabundhu Patro (I. L. R. 7 Calc. 523) referred to.

Empress v. Paramananda & others, 10 I. L. R. Calc. 85; S. C. 13 C. L. R. 375.

An officer invested with special powers under section 34 of the Code of Criminal Procedure (Act X of 1872) should rarely if ever try a case himself under section 209 of the Code of Criminal Procedure, where it appears from some of the evidence that the accused might have been charged with an offence beyond the jurisdiction of the Magistrate to take cognizance of.

Chunder Pershad Singh in re, 10 S. W. R. Cr. R. 30.

Held, that a Subordinate Magistrate of the 1st class has power to deal with the case of an offence provided for by a special law (in this case Act III of 1863 B. C.) when the punishment awardable is six months' fine, and fine only, section 67 and not section 65 of the Penal Code being applicable to such a case.

LOCAL ENQUIRY.

Oudh Behari Narain Sing, appellant, 1 C. L. R. 143.

If a Sessions Judge think it necessary to visit the place of the alleged occurrence of an offence under trial, he should give notice to the parties and the assessors. He should not go without such notice, and after the trial has been completed by delivering of the opinion of the assessors.

LETTERS PATENT OF HIGH COURT.

Reg. v. Nyn Singh, 2 N. W. P. Rep. All. 117.

Section 13 of Acts XXIV and XXV Vict. Cap. 104, and section 27 of the Letters Patent of the High Court, apply to the Court in its revisional as well as in its appellate jurisdiction. Held, by MORGAN, C. J. and TURNER, J. (ROSS and SPANKIE, JJ. dissenting) that where a case is heard by a Division Bench, and a difference of opinion arises, the opinion of the senior Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third Judge being beyond the competency of such Division Bench, and an order in accordance with the views of such third Judge and the junior Judge is not valid. Held, by MORGAN, C. J. and TURNER, J. (ROSS and SPANKIE, JJ. dissenting) that an application to set aside such an order is not in the nature of a review of judgment, and is cognizable by the Courts. Where an order has been actually issued by the High Court, a Division Bench will not disturb the same, unless in the opinion of a majority of the Court the order is bad.

Reg. v. Sheikh Shoobanee & others, 6 S. W. R. Cr. R. 88.

In the Sessions Court the prisoners were convicted and sentenced. On appeal to the High Court, the senior Judge held that the case against the prisoners was not proved, and the junior Judge held that there was sufficient evidence to support the conviction. As the two Judges differed in opinion, the conviction was, with reference to section 36 of the Letters Patent, set aside, and the prisoners released.

Kazeem Thakoor & others, appellants, 10 S. W. R. Cr. R. 45.

Where a difference of opinion arises between two Judges of the High Court in a criminal appeal, the opinion of the senior Judge prevails, under section 36 of the Letters Patent, notwithstanding section 420 of the Code of Criminal Procedure (Act XXV of 1861).

Goshain Luchman Pershad Pooree & others, v. Pohoop Narain Pooree, 24 S. W. R. Cr. R. 30.

The extraordinary powers conferred on the High Court by the Letters Patent section 15 extend to the revising of orders passed under the Code of Criminal Procedure (Act X of 1872), section 518. When a Magistrate makes an order under this section, on the ground that he has received information, and is satisfied with it, no interference is possible; but when he states the nature of the information, the High Court can see whether such information justifies the order made.

MAGISTRATES.

Reg. v. Sheikh Meerun, 1 S. W. R. Cr. R. 25.

The reversal of a Magistrate's order in a purely civil case, though it may deprive the petitioner of an immediate remedy, is necessary to prevent his being prejudiced in his civil remedy.

Thakur Das Manjhi v. Namdar Mundul v. Ujal Mundul v. Namdar Mundul & others, 24 S. W. R. Cr. R. 12.

In two cases, in one of which the evidence was taken entirely by one Deputy Magistrate, whilst the decision was passed by another, and in the other of which although the Deputy Magistrate who decided the case heard part of the evidence, he decided it on the same grounds as the first case, the High Court declined to interfere, because the accused was not said to have been prejudiced by the decision in either case.

Hurro Soondery Chowdrain in re, 4 I. L. R. Calc. 20; S. C. 3 C. L. R. 93.

When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter.

Proceedings of 14th Feb. 1868, 4 Mad Rep. Rul. 2.

The head of a village is within the definition of a Magistrate as defined in section 15 of the Criminal Procedure Code (Act XXV of 1861).

Proceedings of 4th Aug. 1873, 7 Mad. Rep. Rul. 26.

A Head Assistant Magistrate has no power to order a Subordinate Magistrate to submit amended proceedings; but if the Sub-Magistrate be a Magistrate subordinate to the Head Assistant Magistrate, under section 41 of the Code of Criminal Procedure (Act X of 1872) the latter may call for explanation of his subordinate's proceedings.

Reg. v. Guna bin Ragnak & others, 3 Bom. Rep. Crown Cases, 29.

On a reference by a Session Judge, Circulars issued by a District Magis trate forbidding all the Subordinate Magistrates fron taking up cases, if they think they shall have to ac under the provisions of section 277 of the Crimina Procedure Code (Act XXV of 1861) annulled, as beyond the competence of the District Magistrate, and based on a misunderstanding of section 277.

Reg. v. Kuberio Ratno, 4 Bom. Rep. Crown Cases, 8.

On a reference by a District Magistrate a sentence passed by a Magistrate F. P. in a case submitted to him by a second class Subordinate Magistrate, under section 277 of the Criminal Procedure Code (Act XXV of 1861) annulled as the Magistrate of the District alone had power to dispose of cases under that section.

Reg. v. Keshavshet et al, 6 Bom. Rep. Crown Cases, 74.

Held, that under the provisions of section 22G. of the amended Code of Criminal Procedure (Act VIII of 1869) a Magistrate F. P. is, for the purposes of section 434, immediately subordinate to the Magistrate of the district, and not to the Court of Session.

Reg. v. Vyankatrav Shrinivas, 7 Bom. Rep. Crown Cases, 50.

A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case.

Reg. v. Hurihur Churn Singh & another, S. W. R. 1864. Cr. R. 6.

A Magistrate is not bound to give his opinion as to the character of the evidence in prolix detail; much less the Judge in confirming the sentence passed by the Magistrate.

Proceedings of 17th Aug. 1864. Weir, 636.

The jurisdiction of heads of villages is confined to petty thefts not attended with aggravating circumstances. Thefts in a building or thefts by a servant are not therefore cognizable by them.

Proceedings of 14th Dec. 1880. Weir, 636.

A conviction of theft of property valued at 1 Rupee, 2 annas set aside on the ground that the village Magistrate had not jurisdiction.

Para Vagutan accused. Weir, 837.

A village Magistrate has not jurisdiction to try an offence committed in any village other than his own.

P. Krishnamma & others, accused. Weir, 637.

A village Magistrate has authority incidental to his jurisdiction to issue a summons, either written or oral, to persons within the local area of his jurisdiction whose attendance may be required in cases which he is empowered to try: he has no authority to issue summonses to persons outside the area of his jurisdiction.

Proceedings of 9th Oct. 1879. Weir, 638.

The class of persons on whom the punishment of confinement in the stocks may be inflicted defined.

Proceedings of 19th April 1882 Weir, 639.

Members (by hereditary descent) of the blacksmith caste are not persons on whom the pnnishment of the stocks can properly be inflicted.

Bharat Chundra Sen, petitioner, in re, 8 B. L. R. 423 note, S. C., 14 S. W. R. Cr. R. 74.

KEMP, J. :—This is an application on the part of Bharat Chundra Sein, head clerk in the Sub-Registrar's office of Tipperah. The point taken by his pleader is that the Magistrate who is also Sub-Registrar investigated the case in the first instance, and subsequently tried and convicted his client as Magistrate. We think that on the principle that no one should be a Judge in any case in which he is himself interested, as also on the principles laid down in a decision of a divisional Bench of this Court in Reg. *v.* Chandra Sikar Rai (5 B. L. R. 100) the Magistrate ought not to have tried this case. We therefore quash his proceedings, and direct that the case be tried by some other official having power to try it. The fine must be refunded.

Kharak Chand Pal v. Tarack Chunder Gupta, 10 I. L. R. Calc. 1030.

On the 29th of March 1883, the Municipal Commissioners of Commillah at a meeting, issued an order under section 256 of the Bengal Municipal Act of 1876. The accused was tried and convicted before the District Magistrate under section 188 of the Indian Penal Code, and fined Rs. 100 for having disobeyed that order. The Magistrate who tried and convicted the accused, was present as Chairman of the Municipal Commissioners at the meeting of the 29th of March, when the order was passed, for disobedience of which the accused was tried and convicted. Held, that the conviction was illegal, and must be set aside. Sergeant *v.* Dale (L. R. 2 Q. B. D. 558) cited and followed.

MAINTENANCE.

Reg. v. Thaku bin Ira, 5 B. L. R. Cr. R. 81.

An order of maintenance under section 316 of the Criminal Procedure Code (Act XXV of 1861) is a judicial proceedings of a Criminal Court within the meaning of section 404 of that Code, but no appeal lies against such order under section 409.

Panchudas v. Shrimati Shudhamayi, 8 B. L. R. App. 19; S. C. 16 S. W. R. Cr. R. 62.

In this case the prosecutrix applied for an order against her husband under section 316 of Act XXV of 1861 for maintenance. The Deputy Magistrate held that she had failed to establish her right to maintenance under section 316, but awarded maintenance to her for their two infant children, although the husband was willing to take charge of them and also to support the mother if she would live with him. The Sessions Judge being of opinion that the Deputy Magistrate's award of maintenance for the children was illegal, sent up the proceedings of the Deputy Magistrate to the High Court under section 434 of Act XXV of 1861, for the purpose of having the

order quashed. The judgment of the High Court was delivered by KEMP, J. :—" We think that the proceedings of the Deputy Magistrate are illegal. He finds that the wife is not entitled to receive maintenance, as she has not been able to prove that her husband ill-treated her, or was living in adultery with another woman. There is no evidence that the husband is unwilling to support his infant children, on the contrary he states that he is willing so do so provided they reside under his roof and not in his father-in-law's house. The order of the Deputy Magistrate is quashed."

Lalla Gopeenath v. Mussamut Jeetun Kooer, 6 S. W. R. Civ. Rul. 57.

Section 316, Code of Criminal Procedure, does not bar a suit by a wife against her husband for maintenance.

Mussamut Jesmut v. Shoojaut Ali, 6 S. W. R. Cr. R. 59.

The inability of a husband and wife to agree to live together, is no ground for decreeing a separate maintenance to the wife.

Lopotee Domnee v Tikha Moodai, 8 S. W. R. Cr. R. 67.

An order made by a Magistrate under section 316 of the Code of Criminal Procedure (Act XXV of 1861) must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case.

Goyamoney Surinee v. Mohesh Chunder Shaha, 9 S. W. R. Cr. R. 1.

The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem for maintenance with reference to the means of the husband were held to be legal. If the husband is aggrieved, he ought to apply to the Magistrate under section 317, Code of Criminal Procedure (Act XXV of 1861).

Gouda v. Pyari Doss Gossain, 13 S. W. R. Cr. R. 19.

Before an order under section 316 of the Code of Criminal Procedure (Act XXV of 1861) for the maintenance of a wife or children can be passed against a person, the charge must be legally proved against him, the words " due proof " in that section meaning legal proof on oath.

Lutpotee Doomony v. Tikha Moodoi, 13 S. W. R. Cr. R. 52.

Where a Criminal Court ordered a husband to pay a sum of money monthly towards the maintenance of his wife and children, and a Civil Court subsequently, on the suit of the husband for restitution of conjugal rights, gave the husband a decree, it was held that the order of the Criminal Court ceased to have any effect from the date of the decree of the Civil Court.

Meisalback, J. petitioner, 17 S. W. R. Cr. R. 49.

A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under section 316 of the Code of Criminal Procedure (Act XXV of 1861) for the maintenance of their illegitimate daughter.

Subad Domin v. Karam Dome, 20 S. W. R. Cr. R. 58.

A Civil Court has no jurisdiction to make a declaratory order as to the paternity of an illegitimate child. The High Court declined to interfere with the order of a Magistrate declaring a person to be the father of an illegitimate child, when it appeared that the Magistrate acted upon the sworn testimony of the mother, and that he called before him the person complained of as being the reputed father.

Mussamut Somree v. Jitun Sonar, 22 S W. R. Cr. R. 30.

In a case in which a Magistrate made an order under section 536, Code of Crimimal Procedure (Act X of 1872) directing the husband to pay a monthly sum for the maintenance of his wife, the High Court set aside the order on the ground that it appeared that the husband had not been called upon to maintain the wife, who had up to that time lived with her father, and that the father had refused to let the wife live with her husband without receiving money from him. An order under the section 536 cannot be made by a Magistrate of the second-class. Where the law empowers Magistrates of a particular grade to do a particular act, or make a certain order, it should always appear upon the proceedings that the Magistrate making the order or doing the act is a Magistrate who had jurisdiction to do it.

Kolashun Bibee v. Sheikh Didar Buksh, 24 S. W. R. Cr. R. 44.

Quære:—In the case of Mahomedans, where a wife, although legally married, has not attained the age of puberty, is there a liability on the part of the husband to support her as long as she remains under the roof of her father.

Kanoo Soudagur v. Alabundee Bewah, 24 S. W. R. Cr. R. 72.

In making an order for maintenance under the Code of Criminal Procedure (Act X of 1872), section 536, a Magistrate has no power to take security for possible default.

Nepoor Aurut v. Jural, 10 B. L. R. App. 33.

This was a reference under section 296 of the Code of Criminal Procedure by the Magistrate of Pubna. An order for maintenance under the legislative provisions of section 536 of the Criminal Procedure Code (Act X of 1872) was made, and came beforet he Deputy Magistrate for the purpose of being enforced. He called the husband before him to show cause why the order should not be enforced, and the husband thereupon, in his presence, divorced his wife. The Deputy Magistrate considered the divorce so effected by the husband was sufficient to relieve the husband from the duty of compliance with the order of maintenance (*Per* PHEAR, J.)

Now it is clear I think that, as long as any order duly made under section 536, or its former equivalent, is existing unaltered by any subsequent proceeding, it is operative, and it would be the duty of the Deputy Magistrate, when called upon by the wife in whose favour the order was made, to enforce it. The following section, 537, provides a mode in which the person against whom the order is made can, upon a change of circumstances, get that order altered. And it seems to me probable that, upon the facts stated by the Deputy Magistrate, when the husband in his presence divorced his wife, such an alteration of circumstances did occur which would justify the Deputy Magistrate upon the application of the husband in altering the order for maintenance in favour of the wife.

At the same time it appears to me quite clear that that change of circumstance, even if it were such as to justify the withdrawal of the order of maintenance against the wife altogether, would not relieve the husband from the necessity of obedience to the order during the time which had elapsed up to the date when and until that change of circumstance had occurred; in other words, that the husband was at any rate strictly bound to pay the maintenance money according to the terms of the order up to the date when in the Magistrate's presence he divorced his wife, as the Deputy Magistrate says he did.

Lal Das v. Nekunjo Bhaishiani, 4 I. L. R. Calc. 374.

In determining questions under Chapter XLI of Act X of 1872, as to the maintenance of wives and families in certain cases, a Magistrate has no power to enter into any question as to the lawful guardianship of a child. There is nothing in the Code which would warrant a Magistrate in ordering a mother to surrender her illegitimate child to its father, although such child be of the age of maturity. A refusal by the mother to make over the custody of the child in such a case would be no ground for stopping an allowance previously ordered.

Tokee Bibee v. Abdool Khan, 5 I. L. R. Calc. 536; S. C. 5 C. L. R. 458.

Arrears of maintenance, included in the schedule filed by an insolvent, are a debt or liability within the meaning of section 13 of the Insolvent Act (11 and 12 Vict. Cap. 21); and an insolvent, who has obtained a protection order, is not liable for arrest or imprisonment in respect of such.

Quære:—Whether the protection order protects the insolvent from proceedings in respect of any maintenance accruing subsequently to the filing of the schedule?

Abdur Rohoman v. Sakina. Subhan v. Shubraton. Ossuff v. Shama, 5 I. L. R. Calc. 558; S. C. 5 C. L. R. 21.

A Presidency Magistrate is competent to stay an order for maintenance granted under section 234 of Act IV of 1877, (Presidency Magistrate's Act) and to refuse to issue his warrant under the 3rd clause of that section, and to try all questions raised before him which affect the right of a woman to receive maintenance. There can be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and

a dissolution obtained under the Mahomedan law. It is only on proof of the existence of the relationship of husband and wife, that a Magistrate can make an order under section 234 granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section.

Suddun Sahiba v. Mirza Kamar Kudar, 8 I. L. R. Calc. 736.

Under the law of the Sheea sect of Mahomedans, a mutta wife is not entitled to maintenance, but such a provision of the law does not interfere with the statutory right to maintenance given by section 536 of the Code of Criminal Procedure (Act X of 1872). The mutta form of marriage does not admit of repudiation under the law of the Sheea sect of Mahomedans.

Quære:—Whether the form of divorce called Zihar may be exercised in the mutta form of marriage?

Mussumut Jamoti v. Gadalo Kamar in re, 1 C. L. R. 89.

When a duly empowered Magistrate has decided a matter under section 536, Code of Criminal Procedure (Act X of 1872) by dismissing the application after hearing the evidence offered, the District Magistrate is not competent to entertain a complaint *de novo*.

Mussamut Munglo v. Jumna Dass, 2 N. W. P. Rep. All. 454.

An order made under section 316 of the Criminal Procedure Code, (Act XXV of 1861) fixing a sum for the maintenance of a child, containing a prospective order for an increase of the amount awarded as the child grows older, is unauthorized by the law.

Reg. v. Roshunlall, 4 N. W. P. Rep. All. 123.

The circumstance that the father of an illegitimate child is sixteen years old only, and still studying at school, is not by itself a sufficient reason for holding him excused from the necessity of providing for his illegitimate offspring. The law requires that the person on whom the order of maintenance is issued must have sufficient means to support the child.

Reg. v. Bahadur Singh, 4 N. W. P. Rep. All. 128.

A woman of the Jat caste applied under section 316 of the Code of Criminal Procedure (Act XXV of 1861) for an order of maintenance. As she had only gone through the ceremony of "Karao" with her alleged husband, the Joint-Magistrate rejected her application. His order was set aside, in reference, a "Karao" marriage among the Jats being held valid, and the offspring of such unions being entitled to inherit.

Todd, W. B. in re, 5 N. W. P. Rep. All. 237.

A Magistrate of the first class has, as such power to pass an order under the provisions of section 536 of the Code of Criminal Procedure (Act X of 1372) notwithstanding he may not be empowered to take cognizance of offences without complaint. The petitioner, a resident of Cawnpore, was summoned to Allahabad to answer an application for the maintenance of his children. He was ordered to make them a monthly

allowance. A somewhat similar application had been made at Cawnpore, which was rejected on the ground of jurisdiction. Held, that the jurisdiction of the Magistrate who disposed of the case was not barred by the circumstance of the petitioner being resident at Cawnpore, or of the former application having been rejected.

Thompson, W. A. in re, 6 N. W. P. Rep. All. 205.

The proviso to section 536 of Act X of 1872 does not authorize a Magistrate to entertain an application for separate maintenance, on the ground of ill-treatment, from a wife whose husband has not neglected or refused to maintain her, but who has of her own accord left her husband's house and protection; and to order an allowance to be paid to such wife on evidence of ill-treatment.

Mussamut Larlee v. Bunsee Ditchit, 3 N. W. P. Rep. All. 70.

No order can be passed under section 316 of Chapter XXI of the Criminal Procedure Code (Act XXV of 1861) for the maintenance of an unborn child.

Reg. v. Karri Papayamma, 4 I. L. R. Mad. 230.

Notwithstanding the provisions of section 538 of the Code of Criminal Procedure (Act X of 1872) the Magistrate who has made an order for maintenance under section 536 may issue a warrant for collection of arrears of maintenance when the husband is out of his jurisdiction.

Viramma v. Narayya, 6 I. L. R. Mad. 283.

An agreement by a husband to maintain his wife by giving her a house and jewels and by delivering to her annually a certain quantity of grain and money cannot be made the subject of an order under section 536 of the Code of Criminal Procedure, 1872, nor enforced under the provisions of that section.

Marakkal v. Kandappa Goundan, 6 I. L. R. Mad. 371.

An offer by a Hindu, having two wives, to maintain his first wife by allowing her to live in his house and by supplying her with grain to be cooked and eaten separately coupled with a refusal to live with her as husband and wife, does not come within the meaning of the proviso to section 536 of the Code of Criminal Procedure, 1872.

Proceedings of 18th February 1868, 4 Mad. Rep. Rul. 3.

The rejection of an application for maintenance made by the wife of a Christian who had reverted to Hinduism and married a second wife, is not warranted by the decision reported in 3 Mad. Rep. Appendix 7. That decision was merely that a Hindu marriage of a man reverting from Christianity to Hinduism was not void in consequence of a previous Christian marriage. The decision of the High Court did not touch the point which the Assistant Magistrate supposed it to have determined; *viz.*, that a relapse into Hinduism dissolved a previous Christian marriage.

Proceedings of 28th July 1870, 5 Mad. Rep. Rul. 34.

Where the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be rigorously imprisoned for the term of 15 days for every breach of the order under section 316 of the Code of Criminal Procedure, (Act XXV of 1861), the High Court quashed the latter part of the order as being irregular and bad in substance.

Proceedings of 19th April 1871, 6 Mad. Rep. Rul. 23.

The issue of a warrant under section 316 of the Code of Criminal Procedure (Act XXV of 1861) is permissible for every breach of an order of maintenance made under that section, but there seems no ground for saying that a defendant can get out of his liability for any payment by the failure to issue a warrant for the levy of that payment. The result of issuing it for an aggregate of payments is that one month's imprisonment would alone be awardable in default.

Proceedings of 11th Nov. 1874, 7 Mad. Rep. Rul. 37.

There is nothing in the amended section of the present Code of Criminal Procedure (section 536 of Act X of 1872) to render the levy of accumulated arrears of maintenance by a single warrant illegal.

Reg. v. Thaku bin Ira, 5 Bom. Rep. Crown Cases, 81.

An order of maintenance, under section 316 of the Criminal Procedure Code, (Act XXV of 1861) is a "judicial proceeding of a Criminal Court" within the meaning of section 404 of that Code, but no appeal lies against such order under section 409.

Kasam Pirbhai & his wife Hirbai, 8 Bom. Rep. Crown Cases, 95.

An order made by a Magistrate under Act XLVIII of 1860 (Police Amendment Act), section 10 directing a Muhammadan husband to pay a sum monthly for the maintenance of his wife, does not deprive such husband of his inherent right to divorce his wife, and after, such divorce the Magistrate's order can no longer be enforced.

Custom, as to divorce amongst Khoja Muhammadans of the Sunni sect considered.

Chaku Ishvar Bhudar, Bom. Rep. Crown Cases, 124.

It is open to a husband upon whom an order to make an allowance for the maintenance of his wife has been made, under section 316 of the Criminal Procedure Code (Act XXV of 1861) after such order has been made, to prove that his wife is living in adultery, and upon such proof a Magistrate is justified in cancelling an order made under the above section.

Suddun Saheba v.

Although a Shia wife by *moota* marriage is not entitled by the Shia law to maintenance, such a wife is entitled to main-

Mirza Kamar, 11 C. L. R. 237.

tenance under the provisions of section 536 of the Criminal Procedure Code, Act X of 1872.

Where a Shia husband gives up the unexpired portion of the term fixed by a *moota* marriage, he does not thereby terminate the relationship of husband and wife.

Proceedings of 30th July 1875. Weir, 447.

A order directing the payment of maintenance with retrospective effect from a certain date is illegal. The allowance can only be made payable from the date of the order.

Proceedings of 14th Dec. 1880. Weir, 448.

The High Court will not interfere to set aside an order awarding maintenance from a date other than the date of the order, when such order has been made by consent of the parties.

Proceedings of 11th Sept. 1877. Weir, 448.

It is not competent to a Civil Court to make a decree setting aside an order of maintenance made by a Magistrate.

If in disposing of a suit, a Civil Court decides any matter which might have the effect of disentitling a wife to maintenance, a Magistrate who has awarded maintenance is bound in the interests of justice to take the judgment of the Civil Court into consideration before proceeding to pass a fresh order enforcing payment of the allowance.

Proceedings of 10th Feb. 1880. Weir, 450.

The ruling H. C. Proceedings, 11th September 1877 followed.

Gulam Mohideen v. Thasara Bivi. Weir, 450.

A divorced Mahomedan wife is entitled to maintenance during the Iddut, and an order of maintenance for a time subsequent to the expiration of the Iddut, is illegal. If pregnancy is alleged, it might be otherwise.

Laratai v. Ram Dial, 5 I. L. R. All. 224.

A husband upon whom an order to make an allowance for the maintenance of his wife had been made, under section 536 of Act X of 1872, objected to the payment of the allowance on the ground that his wife was living in adultery. The Magistrate entertaining this objection disallowed it, on the ground that the charge of adultery against the wife was not established. The husband subsequently again objected to the payment of the allowance on the same ground. The Magistrate entertaining the second objection allowed it, and directed the husband to discontinue paying the allowance. His order was based on proof of adultery by the wife before the date of the order of the former Magistrate. Held, on the general principles of the rule of *res judicata*, that the second Magistrate was wrong in law in re-opening matters already adjudicated upon, and his order directing the discontinuance of the allowance on the ground of facts antecedent to the former Magistrate's order must be held to be illegal.

Din Muhammad in re, 5 I. L. R. All. 226.

An order for the maintenance of a wife, passed under Chapter XLI of Act X of 1872, becomes inoperative, in the case of a Muhammadan, by reason of his lawfully divorcing his wife, and thus putting an end to the conjugal relation, but it does not become so before the expiration of the divorced wife's "*iddat.*"

Abdur Rohoman v. Satthina (I. L. R. 5 Calc. 558); In re *Kasam Pirbhai* (8 Bom. H. C. R. Cr. Cas. 95); and *Luddun Sahiba* v. *Mirza Kamar Kudar* (I. L. R. 8 Calc. 736); Madras High Court Proceedings, 2nd December, 1879; referred to and followed.

The Muhammadan law of divorce relating to the maintenance of a divorced wife during her "*iddat*" referred to.

MOOKTEAR.

Reg. v. Sham Chand Chowdhry, 1 S. W. R. Cr. R. 34.

A Magistrate has no power to dismiss a "mooktear generally," unless he is convicted of an offence involving moral turpitude or infamy.

Golab Khan in re, 6 B. L. R. Ap. 83; S. C. 7 B. L. R. 179; 16 S. W. R. Cr. R. 15.

The High Court has power, under section 15, Act XX of 1865, to suspend or dismiss a mooktear from his office, when it sees "reasonable cause," although he might not have committed any act of "professional misconduct" under section 16.

Koylash Nath Chowdhry Mooktear in re, 16 S. W. R. Cr. R. 41.

Case of a mooktear who was re-instated by the High Court to his practice after suspension by reason of his having been convicted in two cases, the circumstances of these cases not showing that the mooktear was guilty of any moral turpitude, or that he was unfit to act in the Criminal Courts as a mooktear.

Banchanidhi Mahanty in re, 17 S. W. R. Cr. R. 6.

Where a Magistrate suspended a mooktear for three months for making a wilful false statement, it was held that the Magistrate had no power to suspend the mooktear under Act XX of 1865 and his suspension was set aside.

Fuzzle Ali, petitioner, 19 S. W. R. Cr. R. 8.

The word "act" in section 5 of the "Pleaders and Mooktears" Act, XX of 1865, means the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal. There is nothing in the words of the Act or in its spirit to prevent a person as private agent from going between the prisoner or the duly authorized vakeel upon whom the real responsibility of the defence rests.

Roopa Bewah Kekaroo, 21 S. W. R. Cr. R. 41.

A Magistrate has no power to suspend a mooktear under Act XX of 1865.

Kalicharan Chund in re, 9 B. L. R. App. 18.

The writing a petition for a party who presents it in Court is not acting as a mooktear within the meaning of section 11, Act XX of 1865; and the writer is not liable to punishment under section 13 for practising as a mooktear without a certificate.

Ganga Dayal & others, in re, 4 I. L. R. All. 375.

A pleader or mooktear practising in contravention of the provisions of section 10 of Act XVIII of 1879 is punishable under section 32 of that Act only by the Court before which he has so practised.

NUISANCES.

Reg. v. Allah Buksh & others, 12 S. W. R. Cr. R. 24; S. C. 7 B. L. R. 482 note.

Where persons who were served with notice under section 313 of the Code of Criminal Procedure (Act XXV of 1861) to remove a nuisance, showed cause before the Magistrate, but did not ask him to take evidence or to summon a jury, the High Court declined to interfere with the order passed by the Magistrate under section 308 to remove the nuisance, as there appeared no illegality in the order. The Magistrate should, however in these cases fully record the grounds on which he acts, and his reasons for rejecting the objections made to the removal of the nuisance.

Reg. v. Bhyro Dayal Singh, 3 B. L. R. A. Cr. 4; S. C. 11 S. W. R. Cr. R. 46.

There is nothing in section 62, Criminal Procedure Code (Act XXV of 1861) to justify a Magistrate in making an order under that section on the mere report of a police officer.

Reg. v. Brojololl Mitter, 8 S. W. R. Cr. R. 45.

The occupier who suffers the land to be in a filthy state is the person liable for the penalty.

Reg. v. Janokeenath Buttacharjee, 2 S. W. R. Cr. R. 36.

The obstruction of a private path is not a nuisance under section 308, Code of Criminal Procedure (Act XXV of 1861). Before issue of an order by a Deputy Magistrate for the removal of a nuisance, the opposite party should be called upon to show cause why the order should not be enforced.

Reg. v. Jayakrishna & Harimohun Malo in re, 1 B. L. R. A. C. 20; S. C. 10 S. W. R. Cr. R. 53.

When a case falls, both under section 62 and under section 308 of the Criminal Procedure Code (Act XXV of 1861), the order of the Magistrate ought not to be absolute in the first instance; he should give the defendant an opportunity to show cause against the order.

Semble:—Whether a case comes under either of these two sections or under both, the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate has made the order.

Barodapersad Mustafee v. Modhoosoodun Biswas, 5 S. W. R. Cr. R. 5.

A Deputy Magistrate should proceed, under Chapter XX of the Code of Criminal Procedure (Act XXV of 1861) for the removal of an unlawful obstruction from a thoroughfare, and not under section 320 which relates to dispute concerning use of land or water.

Ujalmayi Dasi v. Chandra Kumar Neogi, 4 B. L. R. F. B. 24; S. C. 12 S. W. R. F. B. 18.

No suit will lie in a Civil Court to set aside an order duly made by a Magistrate, under Chapter XX, section 308 of the Code of Criminal Procedure, relating to nuisances or to restrain him from carrying such order into effect.

Ramchunder Geer Gossain & another, petitioners, 6 S. W. R. Cr. R. 40.

A Magistrate cannot, under section 62, Code of Criminal Procedure (Act XXV of 1861) in general terms forbid two parties to use any musical instrument in the neighbourhood of each others' houses, though he may forbid their doing so for the purpose of mutual annoyance.

Bistoo Chunder Chuckerbutty, case of 10, S. W. R. Cr. R. 27.

Held, that a Magistrate cannot proceed to pass an order for the removal of a nuisance under section 308 of the Code of Criminal Procedure (Act XXV of 1861) without calling on the party to show cause why the order should not be passed against him, and without hearing the objections, even if they are filed after the time fixed for their presentation, but before he takes up the case. A Magistrate's power to fill up a tank is by section 308 limited to having it fenced in; but where the tank is proved to be injurious to the community, he may, under that section, treat it as a public nuisance and cause it to be filled up.

Municipal Commissioners of the Suburbs of Calcutta v. Mahomed Ali, 7 B. L. R. 499; S. C. 16 S. W. R. Cr. R. 6.

The condition and the conduct of an old established slaughter-house were proved to be, in fact, an offensive nuisance and dangerous to the health of neighbours, but the evidence did not show it was in a worse condition than at any time since its establishment; the occupiers, when summoned, refused to ask for a jury under section 310, Criminal Procedure Code (Act XXV of 1861). Held, the Magistrate was justified in suppressing "the trade or occupation" under section 308. No length of enjoyment can legalize a public nuisance.

Uljamaye Dasi *v.* Chundra Kumar Neogi, 4 B. L. R. F. B. 12 S. W. R. F. B. 18.

Reg. v. Abbas Ali Chowdry, 6 B. L. R. 74 F. B; S. C. 14 S. W. R. Cr. R. 46.

An order of a Magistrate under section 62, Criminal Procedure Code, (Act XXV of 1861) *e. g.*, prohibiting one of two rival proprietors of two different hâts from holding his hât on certain days of the week in order to prevent obstruction, annoyance and injury, is not a judicial order; and is, therefore, not open to revision by the High Court under section 404, Criminal Procedure Code (Act XXV of 1861).

PHEAR, J. (dissenting). The power conferred by section 62, Criminal Procedure Code, is of a judicial character within the meaning of the word "judicial" in section 404; and an order of a Magistrate in exercise of that power is in the nature of an injunction, and is, therefore, subject to revision by the High Court under section 404, Criminal Procedure Code.

Reg. v. Parbutty Churn Sircar, 3 S. W. R. Cr. R. 57.

A. is punishable if his land is made filthy by nuisances committed by others, but if A. has sublet his land to others, the actual occupiers of the land are liable.

Reg. v. Poholee Mullick & others, 12 S. W. R. Cr. R. 28.

Where a jury is appointed under section 310 of the Code of Criminal Procedure (Act XXV of 1861) to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound under that section to be guided by the decision of the jury.

Reg. v. Rai Luchmiput Singh, 5 B. L. R. Ap. 81; S. C. 14 S. W. R. Cr. R. 17.

Under section 62 of the Code of Criminal Procedure (Act XXV of 1861) a Magistrate cannot pass a prohibitory order without having previously issued a rule to show cause why the order should not be passed.

Reg. v. Raja Judoobhooshun Deby Roy, 1 S. W. R. Cr. R. 8.

Section 314 of the Code of Criminal Procedure (Act XXV of 1861) authorises the Magistrate to take immediate measures to prevent imminent danger, pending the enquiry of a jury, but not where no jury has been appointed, and after the danger has passed away.

Reg. v. Ram Chandra Mookerjee, 5 B. L. R. 131.

Under section 62 of the Code of Criminal Procedure (Act XXV of 1861) a Magistrate has no power to issue an order *exparte* to cut down trees, on the representation of a party, supported by the report of the Police that the existence of the trees was a nuisance.

Reg. v. Shabuckram Bukoolee & another, 2 S. W. R. Cr. R. 32.

Before a person can be legally punished for refusing to remove and reconstruct roof-drains, evidence ought to be taken whether the party has disobeyed the Magistrate's order, and whether such disobedience has produced, or is likely to produce harm.

Quære :—Whether such an order under section 73 of the Code of Criminal Procedure (Act XXV of 1861) is legal, as that section refers to public nuisances.

Ramloll Mookerjee, 5 S. W. R. Cr. R. 66.

When an application has been made to the Magistrate for the removal of a wall under sections 308 and 320, Code of Criminal Procedure, as affecting the public convenience, the High Court will not compel the Magistrate to proceed under section 320, and enquire whether the land on which the wall was built was open to the use of the complainant's people.

Municipal Commissioners for the Suburbs of Calcutta v. Amanut Ali, 7 B. L. R. 516.

When a Magistrate under section 308 Criminal Procedure Code (Act XXV of 1861), has ordered the suppression of a trade or occupation as a nuisance, and injurious to the health of the community, the High Court will not interfere unless they find either (1) that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or (2) that the cause shown was such as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable and proper. The Court take the findings of fact by the Magistrate to be correct, unless they see that there is not on the record any evidence to warrant such findings.

Hochan v. Elliot, 5 S. W. R. Cr. R. 4.

The mere non-service personally of a notice to remove a nuisance, is not a sufficient ground for the Court, under section 434 of the Code of Criminal Procedure (Act XXV of 1861) to set aside the Magistrate's order, when it appears that the parties did not take the objection before the Magistrate, and that they in fact admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it.

Joynath Mundul & others v. Jamul Sheikh & another, 6 S. W. R. Cr. R. 71.

The omission of a person to keep his ponies from straying is not a public nuisance punishable under section 290 of the Penal Code.

Eshan Chunder Banerjee & others, v. Nund Coomar Banerjee & others, 8 S. W. R. Civ. Rul. 239.

Section 308 of the Code of Criminal Procedure (Act XXV of 1861) refers to nuisances in a thoroughfare or public place, and has nothing to do with the interior of private houses, and therefore, does not bar the jurisdiction of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate respecting some of the owners and occupiers of a house from the free use of their own portion of joint property.

Full Bench Ruling of Koer Bejoy Keshub Roy *v.* Shama Soonderee Dassee, which recognized the absolute right of a share holder in a joint-family house to the extent of allowing him to partition off his own specific share in every single part of the premises, followed.

Gooroochurn Goon & others v. Gunga Gobind Chatterjee, 8 S. W. R. Civ. Rul. 269.

Section 311 of the Code of Criminal Procedure (Act XXV of 1861) and the other sections of Chapter XX of that Code refer to public thoroughfares and not to private roads over which a right of way has been established. The owner of a piece of land between a village and the public road, who allows his neighbour's cows to pass over it on the way to pasture, does not thereby create a right of easement over the land so as to deprive it of all value by rendering its cultivation impossible.

Oneeram v. Lamessor, 9 S. W. R. Cr. R. 70.

In a case of public nuisance under section 290 of the Penal Code, it must be proved that injury, danger, or annoyance have been caused either in regard to the enjoyment of property or the exercise of a public right on the part of a portion of the community or of any particular class of people.

Golam Durbesh, Case of, 10 S. W. R. Cr. R. 36.

Section 62 of the Code of Criminal Procedure (Act XXV of 1861) does not authorize a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks, on the ground that they are an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interferes with the health of the public.

Paul Dass, Case of, 10 S. W. R. Cr. R. 51.

The order of a Magistrate under secton 308, Code of Criminal Procedure (Act XXV of 1861) should be confined to a direction to remove the nuisance complained of. In the case of a tank, the Magistrate cannot order the proprietor to excavate it; the proprietor ought to have the discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If the Magistrate is compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposition the soil taken out in the course of excavation must be placed.

Kalikapershad & others, Case of, 11 S. W. R. Cr. R. 5; S. C. 5 B. L. R. App. 82.

A Magistrate ordered the rival holders of two hauts to abstain from holding their hauts on the same day upon adjacent pieces of ground, as he apprehended a continuance of riots and affrays, and annoyance or injury to persons lawfully employed in them. Held, that the order was strictly within the provisions of section 64 of the Code of Criminal Procedure (Act XXV of 1861) and the High Court accordingly refused to interfere with it.

Reg. v. Ameeruddeen & others, 12 S. W. R. Cr. R. 36.

The order contemplated by section 62 of the Code of Criminal Procedure (Act XXV of 1861) is a particular and specific order addressed to a particular person or particular persons to do or to abstain from a particular act or particular acts. That section does not empower a Magistrate to pass a general order to persons not to allow their cattle or horses to run at large on the public roads; nor can such an order be passed under Act III of 1867, which applies only to injury done by cattle to crops &c., and to the sides of public roads and embankments.

Kalidass Bhuttacharjee v. Mohendronath Chatterjee, 12 S W. R. Cr. R. 40, S. C. 5 B. L. R. App. 82.

Where a Magistrate dismissed a complaint under section 308 of the Code of Criminal Procedure (Act XXV of 1861) it was held that it was competent for him to pass an order under section 62 of that Code in the same case, provided he called on the defendant to show cause why section 62 should not be applied.

Rajbullub Addhya v. Gobindo Chunder Moitro & others, 12 S. W. R. Cr. R. 66.

Section 62 of the Code of Criminal Procedure (Act XXV of 1861) does not apply to disputes connected with lands, but refers specially to nuisances and other similar matters in which immediate action is necessary in order to avoid the risk of illegal consequences.

Radhakishore v. Girdharee Sahee, 13 S. W. R. Cr. R 19.

Section 62 of the Code of Criminal Procedure (Act XXV of 1861) does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur.

Mohun Sirdar v. Obhoychurn Mookopadyah, 13 S. W. R. Cr. R. 72.

Where a Deputy Magistrate, without taking evidence, made an order under section 62 of the Code of Criminal Procedure (Act XXV of 1861), changing a day on which a haut used to be held, and subsequently, on taking evidence, found that his first order was wrong and passed without jurisdiction, he was held to have acted properly in recalling his first order.

Uttam Chunder Chatterjee v. Ramchunder Chatterjee, 13 S. W. R. Cr R. 72.

A Magistrate has no power under section 62 of the Code of Criminal Procedure (Act XXV of 1861) to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do, is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees.

Luchmiput Singh & Rautmul, peti-

A Magistrate cannot pass an order under section 62 of the Code of Criminal Procedure (Act XXV of 1861) directing a person to abstain from a certain act, or to take certain order with certain property, unless he is

tioners, 14 S. W. R. Cr. R. 3.

satisfied that such direction on his part is likely to prevent or tends to prevent a riot or affray; nor can he pass an order under that section or under section 282 or any other section of the law, calling upon a person to enter into recognizances not to collect certain cesses,—though under section 282 the Magistrate may bind him down to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his acts.

Shama Kant Bundopadhya in re, 14 S. W. R. Cr. R. 69.

In referring a case regarding a nuisance to arbitrators under section 310, Code of Criminal Procedure (Act XXV of 1861) a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order, if there is any delay in the submission of the award by the arbitrators.

Dwarkanath Hazrah, petitioner, 16 S. W. R. Cr. R. 60; S. C. 8 B. L. R. Ap. 9.

Where the owner of certain land lived in another district and was not proved to have suffered the land to be in a filthy state, and the Municipal Commissioner fined his mooktear under section 67, Act III of 1864, B. C. which empowered him to fine either the owner or occupier. Held, that the discretion which that section gave had not been properly exercised—proceedings quashed and refund of fine directed.

Pitamber Day, petitioner, 17 S. W. R. Cr. R. 57.

An order in writing under section 62 of the Code of Criminal Procedure (Act XXV of 1861) is necessary to sustain a charge under section 188 of the Penal Code.

Quære:—Whether a Magistrate has not power to proceed under the former section instead of under section 308, against a party for disobeying an order issued by him directing the party to clean a privy pronounced to be a nuisance.

Aman Chinaman, petitioner, Case of, 17 S. W. R. Cr. R. 58.

The extraordinary power given by section 404, Code of Criminal Procedure (Act XXV of 1861) was declined to be exercised to quash proceedings held under a *bonâ fide* exercise of discretion in a case where a fine was imposed for keeping a piggery in a filthy state.

Roopnarain Dutt & another, petitioners, 18 S. W. R. Cr. R. 38.

The petitioners who filled up a portion of a ditch or drain which formed part of a public way, and which belonged to the public, instead of being convicted of a nuisance punishable under section 290, Penal Code, were convicted of criminal trespass. But in as much as they had not been sentenced to a heavier punishment than might have been awarded, if they had been convicted of a nuisance the High Court acting under section 426, Code of Criminal Procedure (Act XXV of 1861) declined to interfere.

Banee Madhub Ghose v. Wooma Nath Roy Chowdhry, 21 S W. R. Cr R. 26.

The operation of section 518, Code of Criminal Procedure (Act X of 1872) is confined to cases where, in the opinion of the Magistrate, the delay which would be caused by adopting a different procedure from that specified in the explanation of that section, would "occasion a greater evil than that suffered by the person upon whom the order is made, or would defeat the intention, of this (the 39th) Chapter." Where a Magistrate, without hearing the petitioner or giving him an opportunity of being heard, and simply upon the foundation of a police officer's report, directed the petitioner to abstain from holding a haut upon his land on a certain day, because another party had long been accustomed to hold a haut upon his land adjacent to the petitioner's haut on the day following that in which the petitioner held his haut, it was held that his order passed under section 518 was *ultra vires*, the police officer's report being vague and insufficient, and a private interest of this kind not affording a ground for making an order under section 518, or any other order under the Criminal Procedure Code.

Reg. v. Bhojendro Lall & others, 12 S. W. R. Cr. R. 86.

An order by a Magistrate under section 521, Act X of 1872 for the removal of a nuisance does not become absolute until an opportunity is given to the persons affected by it to show cause why the order should not be carried into effect. No order can be made under section 528 of the Code, unless there is imminent danger or fear of injury of a serious kind to the public involved in the case; and where a Magistrate, who had made an order under section 521, subsequently directed further enquiry to be made, it was held that he must be considered to have abandoned his proceedings under section 528, and that he should have proceeded under section 525 instead of fining the party charged under section 188 of the Penal Code.

Shah Soojaut Hossein & another, petitioners, 22 S. W. R. Cr. R. 19.

A Magistrate's powers, under section 521, Code of Criminal Procedure, are confined to the instances specially mentioned in that section which does not confer general powers upon a Magistrate to pass any order he may consider necessary for the protection of the public health. It is only from a thoroughfare or public place that under that section a Magistrate is at liberty to direct a nuisance to be removed.

Brindabun Dutt v. Dwarkanath Sein, 22 S. W. R. Cr. R. 47.

In a case in which a party, on whom an order had been made for abatement of nuisance, applied under section 523, Code of Criminal Procedure (Act X of 1872) for the appointment of a jury; the Magistrate appointed the complainant and two of his witnesses to be,—the former the foreman, and the latter two of the members of the jury. Held, that the jury so constituted by the Magistrate was not a proper tribunal under section 523, Code of Criminal Procedure, and the proceedings &c. were accordingly set aside, and the Magistrate directed to appoint a fresh jury.

Rosiklall Nundi v. Kartic Shaut, 22 S. W. R. Cr. R. 48.

In order to found the jurisdiction of a Magistrate to take action under section 532 of the Code of Criminal Procedure (Act X of 1872), it is necessary that a dispute exist between two persons concerning the right to the use of any land or water, or any right of way; the jurisdiction is intended for the purpose of preserving the public peace.

Afzoo, petitioner, 22 S. W. R. Cr. R. 52.

Where a Cantonment Joint-Magistrate, acting on the advice of the Station Staff Surgeon, ordered a person to desist storing hides in the station, and directed him to remove the hides to a place distant from the town, the High Court held that the order appeared to be one under section 518, Code of Criminal Procedure, (Act X of 1872), and therefore it could not interfere with it under the law.

Nundo Kumaree Peshagur v. Anund Mohun Gooho Kakurta, 24 S. W. R. Cr. R. 68.

The Code of Criminal Procedure (Act X of 1872), section 521 does not warrant a Magistrate's interference with a prostitute for the purpose of removing her from her dwelling-house simply on the ground of her profession, so long as she behaves herself orderly and quietly and creates no open scandal by riotous living.

Hadjee Muzhur Ali & others v. Gundowree Sahoo, 25 S. W. R. 72

In a prosecution under section 521, Criminal Procedure Code, (Act X of 1872) it is necessary to show two things:—first, that the act complained of is a nuisance; and second, that it was committed on a thoroughfare or public place. Where a Deputy Magistrate had treated the slaughtering of cattle as a "nuisance" under section 521 of the Criminal Procedure Code, and ordered its discontinuance within a private enclosure belonging to some Mahomedans. Held that, though the act complained of might be shocking to the prejudices of Hindoos, it could not properly be regarded as a nuisance, and that, at any rate, the act being done in a private place and not a thoroughfare, it could not be dealt with under section 521.

Held also, that the agreement of the accused to refer the matter to a jury, which had given the case against them, in no way deprived them of their legal rights, or affected the fact that the question of the expediency of of discontinuing the alleged nuisance, which had been referred to the jury, ought not to have been so referred.

Nimae Churn Dey & others v. Kashie Nath Rakhit & others, 26 S. W. R. Cr. R. 7.

A Magistate is bound under section 525, Criminal Procedure Code (Act X of 1872) to take evidence when, on the receipt of of an order under section 521, the party appears and shows cause and submits to the judgment of the Magistrate. In such a case the penalty provided by section 188 of the Penal Code referred to in the 3rd para. of section 529, cannot be enforced.

Reg. v. Ameer & Jelaloodeen, 2 N. W. P. Rep. All. 5.

Placing taubans in a public thoroughfare is an offence under section 34 of Act V of 1861. But Sub-Magistrate not competent of his own motion to institute the prosecution.

Reg. v. Mussumut Begum, 2 N. W. P. Rep All. 349.

A prostitute by visiting a dak-bungalow, at the request of a person staying there, but against whom there is no evidence of any impropriety of speech, or gesture, or act, or that she had occasioned annoyance to the public generally, or to any person, who, in the exercise of their public right, were lodging in the bungalow, is not liable to be convicted under section 290 of the Indian Penal Code as having committed a public nuisance.

Reg. v. Damodhur Dass, 2 N. W. P. Rep. All. 452.

In order to remove a public nuisance, a Magistrate is bound to proceed under section 308 and following sections of Chapter XX of the Criminal Procedure Code, (Act XXV of 1891) and is not competent to pass a summary order to the police to do so.

Muthialu Chetti v. Bapun Saib, 2 I. L. R. Mad. 140.

An order of the Magistrate directing that all music should cease when any procession is passing a certain place of worship, held *ultra vires*.

Reg. v. Vitti Chokkan & others, 4 I. L. R. Mad. 229.

The term "public spring" in section 277 of the Indian Penal Code does not include a continuous stream of water running along the bed of a river.

Reg. v. Udayan, 6 I. L. R Mad 280.

Omission to fence a wall on private ground within eight yards of a highway and open to it, is not punishable as a public nuisance.

Proceedings of 12th Feb. 1869, 4 Mad. Rep. Rul. 35.

Orders by Sub-Magistrates, in one case directing the removal of a house on the ground that it was in a dangerous and dilapidated condition, and in the other directing the removal of a granary on the ground that it had been improperly erected upon land required to be kept unoccupied for common purposes, were set aside by the High Court because the Sub-Magistrate acted without jurisdiction.

Proceedings of 16th Aug. 1869, 4 Mad. Rep. Rul. 67.

An order issued by a Magistrate under section 62 of the Code of Criminal Procedure (Act XXV of 1861) in consequence of a Mahazirnama signed by certain persons, but without any notice to the defendant or enquiry by the Magistrate, is illegal.

Proceedings of 22nd Feb. 1870, 5 Mad. Rep. Rul. 19.

The Sub-Magistrate issued an order to two persons directing them to remove a certain embankment whereby the adjacent lands of the complainant were in danger of being flooded. Held, that the act of the defendant was not an act which could be prohibited by the Sub-Magistrate under section 62 of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Dalsukram Haribhai, 2 Bom. Rep, 384.

The Magistrate of a District issued an order, under section 308 of the Code of Criminal Procedure (Act XXV of 1861) calling upon the petitioner to remove a building, on the ground that it was an unlawful obstruction upon a high-road. A jury of five persons was appointed by the Magistrate's successor, under section 310 to report, within fifteen days, whether the order was reasonable and proper. The jurors, being without instructions, took different views as to the performance of their duties; but four of them visited the premises, and were unanimous in finding that the building complained of was not on a high-road at all. Five days after receiving reports to this effect, the Magistrate issued another order to the petitioner, requiring him to pull down his house within fifteen days, as the jurors had made no report *within the time prescribed.* The petitioner showed cause under section 313, but without effect; and the order was repeated. The Session Judge, meanwhile, upon application of the petitioner, called for the proceedings under section 434; but the Magistrate wrote, questioning the Judge's authority to interfere; and without waiting for a reply, proceeded to try the prisoner for disobedience to an order duly promulgated by a public servant, and sentenced him to twenty-five day's imprisonment, under section 188 of the Penal Code. His house was also pulled down. The proceedings were ultimately forwarded to the Session Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of nuisances. Held, (reversing the conviction) that the Magistrate ought at once to have complied with the precept of the Session Judge under section 434; and that he was not warranted in convicting and imprisoning the petitioner for disobeying an order, the legality of which was then properly under the consideration of an Appellate Court: Held, also, that the petitioner had shown sufficient cause to satisfy the Magistrate under section 313 that the order to pull down the house was "not reasonable and proper." *Quære,* whether Act VIII of 1850 would protect a Magistrate in such case from being sued for damages.

Ashburner v. Keshav valad Tuku Patil et al. 4 Bom. Rep. App. Civ. 150.

An order made by a Magistrate under section 308 of Act XXV of 1861 (Criminal Procedure Code) is not a judicial proceeding within the meaning of section 404 of that Act. A Magistrate who makes an illegal order, which purports to be made under section 308 of Act XXV of 1861, but is not made in accordance with the provisions of that section, is liable to be sued in the Civil Court in respect of such order, and to be restrained by injunction from carrying it into effect.

Reg. v. Ramchandra Eknath et al. 6 Bom. Rep. Crown Cases, 36.

The temple of Pandharpur, a public temple, is visited at certain periods of the year by a large concourse of pilgrims. With a view to prevent the dangers arising from overcrowding and to improve the ventilation, the Magistrate F. P., by a written order, under section 62 of the Criminal Procedure Code (Act XXV of 1861) directed hereditary priests of the temple to widen and heighten the doorway. Held, that such order was legal under the above section.

Semble, that the case would have been the same had the temple been private property; and also that the power of Magistrates to issue orders under the section in question is entirely discretionary.

Ganprasad bin Sobharam, petitioner, 9 Bom. Rep. 160.

An order under section 308 of the Code of Criminal Procedure (Act XXV of 1861) is a judicial proceeding within the meaning of section 404 of that Code and is, therefore, open to review by the High Court under its extraordinary jurisdiction, when an error in law is committed.

Ashburner *v.* Keshav, (4 Bom. Rep. A. C. J. 150) on this point overruled, and The Collector of Hooghly *v.* Taraknath Mukhopadhya, (7 Beng. Law Rep. 449) followed.

Reg. v. Ranchhod Dayal, 10 Bom. Rep. 424.

A Second-Class Magistrate, who issues an order under section 518 of the Criminal Procedure Code (Act X of 1872), has no jurisdiction to punish for its disobedience by reason of section 473 of the Criminal Procedure Code.

Govt. v. Mahomed Buksh, 1 N. W. P. Reg. (Agra) 23.

Held, that an Assistant Magistrate as he comes within the definition of the term of "any Magistrate" was competent to pass an order under section 62 of the Criminal Procedure Code (Act XXV of 1861), which contemplates circumstances under which an immediate order is urgently required, and in this respect differs from section 308 of that enactment, and that it should be read along with section 188 of the Indian Penal Code.

Govt. v. Sham Soonder, petitioner, 1 N. W. P. Rep. (Agra) 34.

Held, that the Magistrate as President of Municipal Committee has no power to issue an order forbidding as a nuisance an act not included in the rules passed under Act XXVI of 1850.

Govt. v. Chooneelall, 2 N. W. P. Rep. (Agra) Criml. 1.

The accused was fined by the Magistrate for not having closed the drain in pursuance of the verbal order of the Magistrate. Held, that the Magistrate should have proceeded under Chapter XX, Act XXV of 1851 in as much as the nuisance was not one from which immediate danger was apprehended, and not under section 62 which empowers the Magistrate to put an immediate determination to the continuance

thereof, a written order not having been given, the procedure was faulty and therefore quashed. Only Magistrates of a district or division can act under Chapter XX, section 308.

Bradley v. Jameson, 11 C. L. R. 414.

An order having been made under section 518 of the Criminal Procedure Code, Act X of 1872, was subsequently reviewed by the Magistrate who passed it. On the review, the Magistrate struck off the case remarking that the order was bad, and referred the matter to his superior officer. The latter having declined to interfere, stating that he saw nothing illegal in the order, revived his former order. Held, that there being no fresh proceeding, the order reviving the other was bad.

Proceedings of 30th October 1876. Weir, 418.

Orders made under section 518 of the Code of Criminal Procedure (Act X of 1872), not being judicial proceedings, are not open to revision by the High Court under section 297 of the Code of Criminal Procedure.

Proceedings of 4th Feb. 1879. Weir, 419.

Scope of powers conferred in section 518. The application of the section is confined to the particular act from which danger is apprehended, and it does not authorize an order prohibiting a course of conduct or an occupation involving a series of acts done at certain intervals and spread over a period of time.

Pedda Chari, petitioner. Weir, 422.

A merely temporary prohibition of the use of music in front of the place of worship referred to in Muthialu Chetti *v.* Bapun Saib (2 I. L. R. Mad. 140) will not necessarily be interfered with, as being opposed to the law as laid down in the judgment of the High Court, but a repetition of such orders would be illegal, in as much as the judgment of the High Court would thereby be rendered inoperative.

The judgment of the High Court applies only to persons who are *bonâ fide* assembled for the purpose of worship.

Proceedings of 22nd Nov. 1879. Weir, 428.

An order interdicting for an indefinite period the use of the streets for the purposes of a certain caste procession is illegal, being beyond the scope of the law (*i. e.*, Chapter XXXIX Criminal Procedure Code). Such an order if made (by a Subordinate Magistrate) without express reference to any provision of the Code may be recalled by the Magistrate of the District as an order made *ultra vires*, and if made with express reference to section 518, Criminal Procedure Code, it may, although not open to revision by the High Court, be recalled by the successor of the Magistrate who made it.

Revision Case No. 23 of 1882. Weir, 429.

The above ruling dated 22nd November 1879 followed.

Seeni Nyna Mohideen, petitioner. Weir, 430.

Orders made by a Magistrate under section 518 of the Code of Criminal Procedure (Act X of 1872), not being open to revision by the High Court, the proper course to be pursued by a person feeling aggrieved by any such order is to petition the District Magistrate to recall the order, and, if that fails, to petition the Government.

Proceedings of 20th Oct. 1880. Weir, 430.

Sections 518 and 521 C. P. C. (X of 1872) do not empower a Magistrate to pass orders regarding the custody and guardianship of children. Section 518 being merely ancillary to section 521, it follows that where the latter section does not apply, the former section becomes also inapplicable.

Revision Case No. 86 of 1881. Weir, 431.

Section 521 does not authorize an order prohibiting on sanitary grounds, burials in certain places. Such an order, if the circumstances require it, should be passed under the powers conferred in section 518, or 519.

Proceedings of 5th Dec. 1867. Weir, 432.

Local nuisances specifically provided for in section 521 are taken out of the general provisions in section 518 of the Code.

Empress v. Brojokanto Roy Chowdhuri, 9 I. L. R. Calc. 637.

Every order made under section 133 of the Code of Criminal Procedure, Act X of 1872, must appoint a time within which, and a place where, the person to whom it is directed may appear before the Magistrate, and move to have the order set aside or modified.

No unconditional order can be made under that section.

Proceedings of 28th January, 1878. Weir, 99.

Where accused had taken their station at a place on a public road inviting the villagers to play at cards and winning sums of money from them by means of the game. Held, that the act amounted to a public nuisance under section 290.

Proceedings of 25th Feb., 1879. Weir, 100.

Gambling in a private house is not *per se* a public nuisance under section 290.

Bethan Chetti & others. Weir, 101.

Gambling in a market place held to amount to a public nuisance.

Badise Yellamander & others. Weir, 101.

The imprisonment awardable in default of payment of a fine imposed under section 290, (Indian Penal Code) may be rigorous imprisonment.

Vasudevan Chetti & others. Weir, 102.

A conviction under section 278 of vitiating the atmosphere so as to make it noxious to health by throwing dust and sweepings in front of certain houses, upheld as a conviction of an offence under section 290 of the Code.

Ram Tunnoo v. Sreenath Dass. Marshall's Rep. 537.

A person injured by the erection of an obstruction on a public highway is not precluded from suing the person by whom it has been caused, by the circumstance that he has previously applied to the Magistrate for an order for its removal, and that the Magistrate refused to make any order.

OBSTRUCTION.

Reg. v. Pitti Singh, 8 S. W. R. Cr. R. 37.

Where a Magistrate has commenced proceedings under section 308 of the Code of Criminal Procedure (Act XXV of 1861) he is not at liberty to proceed otherwise than in conformity with the rules laid down in Chapter XX of the Code.

Troylukhonath Bose in re, 5 S. W. R. Cr. R. 58.

The obstruction of a drain into which the sewage of complainant's premises fell, does not fall either under section 308 or 320 of the Code of Criminal Procedure (Act XXV of 1861), but is matter for a civil suit and injunction.

Grischunder Chuckravaty, Case of, 15 S. W. R. Cr. R. 36.

The Magistrate of a District can alone hold proceedings in a case (such as the removal of a thatched house) under section 308 of the Code of Criminal Procedure (Act XXV of 1861). The Joint-Magistrate while in charge of the Magistrate's office has no such jurisdiction.

Punchanun Bose & another, petitioners, 15 S. W. R. Cr. R. 41.

Proceedings under section 308 of the Code of Criminal Procedure (Act XXV of 1861) for the removal of obstructions may be originated by a Joint-Magistrate in charge of a division of a district.

Becharam Bhuttacharjee & others, petitioners, 15 S. W. R. Cr. R. 67.

In the case of a complaint under section 308 of the Code of Criminal Procedure (Act XXV of 1861) for the removal of an obstruction from a thoroughfare, a Magistrate should first enquire if the road is a public one or not. If he finds in the affirmative, he has jurisdiction to proceed; if in the negative, he should withhold his hand and abstain from carrying out the order for removal of the obstruction.

Nilkomul Mookhopadhya v. Anund Chunder Lushkur, 19 S. W. R. Cr. R. 6.

Section 62 of the Code of Criminal Procedure (Act XXV of 1861) does not apply to a private dispute between two parties relative to a path.

Kashi Chunder Chuckerbutty v. Yar Mahomed, 21 S. W. R. Cr. R. 10.

Section 526, Code of Criminal Procedure (Act X of 1872) does not enable a Magistrate to make any orders except such as are mentioned in section 521 under which he can only deal with existing obstructions: the Magistrate has no power to direct what is to be done in the case of any future obstruction.

Brindabun Dutt, petitioner, 21 S. W. R. Cr. R. 24.

A Magistrate of the 2nd class having passed an order under Act X of 1872, section 518, for the removal of an obstruction, the Magistrate on appeal held that though the proceedings of the Subordinate Magistrate were without jurisdiction, he (the Magistrate) was competent under the section 518 to direct the removal of the obstruction; and he passed an order accordingly. Held, that the order of the Magistrate under section 518 was illegal, and that he should have proceeded under section 521 and the following sections of the Code.

Roy Omeschunder Sen v. Ichanath Mozumdar, 21 S. W. R. Cr R. 64.

In a case in which a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, on the application of the party charged, appointed a jury under section 523 of the Code of Criminal Procedure (Act X of 1872), it was held that the question the jury should have been told to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bonâ fide* question between the parties as to the right of way over this particular piece of land.

Sreenath Dutt v. Unnoda Churn Dutt, 23 S. W. R. Cr. R. 34.

A Magistrate's jurisdiction under section 518, Criminal Procedure Code (Act X of 1872) to direct the removal of an obstruction is confined to cases where there has been annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or where there is a probability of a riot or affray.

Angelo & another, (defts) v. Cargill & another, complainants, 9 B. L. R. A. Cr. 417; S. C. 18 S. W. R. Cr. R. 41.

Where in a proceeding before a Magistrate under section 308 of the Code of Criminal Procedure (Act XXV of 1861) for the removal of an obstruction from a thoroughfare or public place, the accused appears and shows cause, it is the duty of the Magistrate to enquire whether there is a thoroughfare or public place, and whether there is an obstruction. If the Magistrate makes the enquiry upon evidence before him, he does not act without jurisdiction, or in excess of jurisdiction. The High Court cannot set aside his order except for an error in law, or an excess of jurisdiction. It is not a ground for interference that the Magistrate has come to an erroneous decision upon the evidence.

Chundernath Sein in re, 5 I. L. R. Calc. 875.

Before a Magistrate can make an order under section 521 of the Code of Criminal Procedure (Act X of 1872) to remove an obstruction from a path alleged to be a public thoroughfare, he must first, in a proceeding held under

section 532 have come to the conclusion that the path is open to the use of the public. The only functions which a jury appointed under section 523 can exercise, are to consider whether the order made by the Magistrate under section 521 is reasonable and proper, it being no part of their duty to determine the rights of parties in property. Held, therefore, that where a Magistrate, through a mistaken view of the law, ordered the removal of an obstruction on a pathway under section 521, and had further submitted this order to the consideration of a jury appointed under section 523 before he had himself come to a conclusion whether such pathway was a public thoroughfare, the only course left open to him under such circumstances was to stay all proceedings initiated under section 521 and take action under section 532.

Chundernath Sen v. Ram Dyal Ghuttuck & others, 6 C. L. R. 379.

In order to give a Magistrate jurisdiction to direct the removal of an unlawful obstruction under section 521 of the Code of Criminal Procedure, the place obstructed must be a thoroughfare or public place; and where this is disputed by the person, on whom notice to remove the obstruction has been served, the decision of the question cannot be referred, under section 523 to a jury. A Magistrate ought not, at the instance of one party, and behind the back of the other, to cancel the appointment of a juror, even if such juror be his own nominee.

Imandi Khan in re, 8 C. L. R. 399.

The fact of a Magistrate taking action under section 521 of the Code of Criminal Procedure (Act X of 1872) is *primâ facie* sufficient to show that he considers the *locus in quo* to be a thoroughfare or public place; and if no objection is taken that it is not such, and the jury find that the order made under that section is reasonable and proper, the High Court will not interfere.

Mohur Mandar in re, 8 C. L. R. 431.

Where a person to whom an order has been issued under section 521 of the Code of Criminal Procedure (Act X of 1872) appears to shew cause against such order, the Magistrate is bound to take evidence under section 525 of the Code.

Khan Chund v. Collector of Boolundshuhur, on the part of Govt. 1 N. W. P. Rep. All. 197.

If a case within section 62 of the Code of Criminal Procedure (Act XXV of 1861) also falls within the scope of section 308 of the same Code, a Magistrate must conform to the more particular directions of the latter section, not to those of the former.

Lindsay in re, 4 I. L. R. Mad. 121.

Where a complaint was made to a Magistrate that an obstruction had been raised and existed on land reserved by Government and dedicated as a public road: Held, that an *ex parte* order, purporting to be made under section 532 of the Code of Criminal Procedure (Act X of 1872) directing the party in possession not to retain possession of the land until he should obtain the decision of a competent Civil Court adjudging him to be entitled to exclusive possession, with a further direction to remove the obstruction, was bad in law.

Proceedings of 17th August, 1875. 8 Mad. Rep. Rul. 9.

Under Act XXV of 1861, section 62, it is necessary that the direction should be addressed to a particular person, or particular persons, and not to the public generally, and with reference to a particular occasion only, not for a continuance.

Empress v. Ram Singh & others, 11 C. L. R. 462.

The accused were charged generally with obstruction in a public way, no danger, obstruction or injury being alleged to have been caused to any person, and were summarily convicted. Held, that the conviction could not be sustained under section 283 of the Indian Penal Code.

OF THE DISPOSAL OF PROPERTY.

Ramjeebun Doobey v. Luchmonee Dabea, S W. R. 1864 Cr. R. 5.

If personal property of which a person has been unlawfully deprived comes into the hands of a Magistrate, he may direct its restoration to the owner, otherwise the owner must sue for its value in the Civil Court.

Shibchunder Rai, Appellant, 9 S. W. R. Cr. R. 57.

A Deputy Magistrate restored to an accused, money found in his house along with stolen property, the prosecutor having failed to prove that the money was his. The Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor. Held, that the order of the Sessions Judge was made without jurisdiction. Held, further, that the order of the Deputy Magistrate was one which could not be interfered with by the High Court as a Court of Revision.

Rash Mohun Goshamy & another v. Kalinath Raha & another, 19 S. W. R. Cr. R. 3.

Under section 132A. Act VIII of 1869, no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment.

Michell in re, 1 C. L. R. 339.

A Government currency note stolen from A. was cashed with B. The thief was tried and convicted for the theft, and after this conviction the Magistrate ordered the note to be returned to B. Held, that the Sessions Judge was, under section 419 of the Code of Criminal Procedure, (Act X of 1872) the proper person to deal with an application made by A. for the reversal of that order. Where a stolen currency note has been delivered to a *bonâ fide* holder for value, the Court will not, on conviction of the thief restore the note to the person from whom it was stolen. A Government currency note is not "goods" within the meaning of the Contract Act.

Annapurna Bai in re, 1 I. L. R. Bom. 630.

A. was charged before the Police with theft of certain property. The police considered that no theft had been committed, and reported the matter to a 2nd class Magistrate, who, agreeing with the police, ordered the property to be restored to A. On application by the complainant, the district Magistrate found that A. had removed, though not dishonestly the property from B. a deceased person, and ordered the property to be given by the police to B.'s heirs. It was so given.

Held, that the provisions of Chapter XXX of the Code of Criminal Procedure (Act X of 1872) do not apply to such a case. Sections 415, 416, and 417 contemplate proceedings preliminary to, and independent of, inquiry. Upon general principles, where there has been an inquiry, or a trial, and the accused person is discharged or acquitted by any criminal Court, that Court is bound to restore that property into the possession of the person from whom it is taken, unless, as provided for by section 418, such Court is of opinion that "any offence appears to have been committed" regarding it, then such order as appears right for the disposal of the property may be made.

The High Court cannot direct the restoration of the property already delivered by the police under the illegal order of the District Magistrate.

Proceedings of 29th March, 1870. 5 Mad. Rep. Rul. 22.

The Assistant Magistrate on a review of the proceedings of the Subordinate Magistrate passed orders directing that certain produce should be delivered over to the parties whom he considered entitled thereto. The Subordinate Magistrate had passed no orders under section 132A. of the Criminal Procedure Code (Act XXV of 1861). Held, that the orders of the Assistant Magistrate were made without any jurisdiction.

Proceedings of 13th Dec., 1870. 6 Mad. Rep. Rul. 9.

A Magistrate has no jurisdiction to order a sum of money deposited under section 228 of the Code of Criminal Procedure (Act XXV of 1861) for the refund of which an application was made, to be credited to Government.

Reg. v. Ramdas Samaldas, 12 Bom. Rep. 217.

The words "any property" in section 115 of the High Court's Criminal Procedure Act X of 1875, include as well property voluntarily produced before the Magistrate by a witness in the case, as property seized by the police or found on the person of the prisoner. The reference to a Magistrate under section 115 of the High Court's Criminal Procedure Code, Act X of 1875, is not a trial for the final determination of the rights of the parties, and it is not incumbent upon the Magistrate on such reference to hear witnesses, but he may rightly order the delivery of property to that one of the rival claimants whom he considers, upon the statement of their respective cases, to have made out a *primâ facie* case, and it is not competent to the High Court to review the decision at which the Magistrate so arrives.

Proceedings of 13th Feb. 1874. Weir, 367.

Section 418 (Act X of 1872) merely empowers a Magistrate to pass orders for the disposal of property which has been the object of an offence.

Proceedings of 30th June 1874. Weir, 367.

A Magistrate cannot act under section 418 in cases where the accused have been discharged on the ground that no offence has been proved against them.

Parsanada Nynar accused. Weir, 368.

The ruling in High Court Proceedings 30th June 1874 followed.

Proceedings of 20th July 1875. Weir, 368.

Section 418 does not place the property at the disposal of the Magistrate in the sense of enabling him to bestow it in charity. The Magistrate should make such legal disposition thereof as seems right, that is, direct its restoration to some one to whom it seems to belong or permit it to continue in the possession in which it is found or otherwise.

Empress v. Prayag Singh, 9 I. L. R. Calc. 103.

A Magistrate has no jurisdiction to make an order under section 518 of the Code of Criminal Procedure (Act X of 1872) merely for the protection of property.

OF THE TRANSFER OF CASES.

Reg.v. Ameer Khan, 7 B. L. R. 240; S. C. 15 S. W. Cr. R. 69.

On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds, mainly, that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was calculated to prejudice the prisoners; that the police at Patna were getting up the case against the prisoners by improper and illegal means; that by those means was created such a feeling of dread and insecurity among witnesses and others in Patna as would prevent a fair trial from taking place there; that some of the witnesses for the defence, although willing to give evidence in Calcutta, refused to go to Patna to give evidence; and that many difficult points of law were likely to arise at the trial; but these allegations were denied by the affidavits filed in opposition to the application. Held (MACPHERSON, J. doubting) the High Court had power under clause 29 of the Letters Patent to transfer the case for trial by itself. The Court, however, refused the application on the ground that a sufficient case had not been made out for the exercise of the power of the Court.

Per PHEAR, J. :—A single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a criminal case from a Court in the mofussil to the High Court in the exercise of its extraordinary original criminal jurisdiction.

Reg. v. Kistochunder Ghose, 2 S. W. R. Cr. R. 58.

A Magistrate is bound to file with the record any explanation that a prisoner wishes to make. It is only when there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one Magisterial officer to another.

Reg. v. Madhub Chunder Misser, 13 S. W. R. Cr. R. 45.

A Civil Court may, under section 171 of the Code of Criminal Procedure (Act XXV of 1861) transfer a case to the criminal Court for investigation, without specifying the particular officer by whom it is to be investigated, and the deposition of the civil Court officer setting forth the charge on which he transferred the case to the criminal Court is a sufficient complaint.

Reg. v. Mudhoosoosoodun Roy, 16 S. W. R. Cr. R. 49.

Ex parte statements made in the High Court by parties who invoke the aid of the Court to transfer a case from one authority to another, ought to be based upon truth. Case in which the High Court permitted a Deputy Magistrate to be examined on behalf of a petitioner whose case was investigated by the Deputy Magistrate.

Reg. v. Nobocoomar Banerjee, 14 S. W. R. Cr. R. 12; S. C. 5 B. L. R. Ap. 45.

Although section 36 of the Code of Criminal Procedure (Act XXV of 1861) does not require a Magistrate to state his reasons for transferring a criminal case from a Court subordinate to him to his own or to any other subordinate Court, the High Court set aside an order of a Magistrate transferring a case after the subordinate Magistrate, before whom it was, had taken the evidence for the prosecution, and had expressed an opinion unfavourable to the prosecution.

Ramdyal Sing in re, 5 B. L. R. App. 89.

Mr. D. M. Testro, Assistant Magistrate of Khoordah fined the appellant under section 34 of Act XX of 1865 for practising as a Revenue Agent in the office of the Assistant Collector of Khoordah, without having the certficate, required by the Act. The Sessions Judge thinking, the order to be illegal, as such a fine could only be imposed by the Revenue officer in whose Court the appellant practised, forwarded the papers of the case to the High Court in order that the sentence might be set aside as illegal.

LOCK, J.:—"We think that there has been a formal error on the part of the Assistant Magistrate in transferring this case from the Revenue to the Criminal side of his Court, and trying it in his capacity of Assistant Magistrate and not in that of Assistant Collector. This error, however, does not appear to be material, as Mr. Testro is both Assistant Collector and Assistant Magistrate, and the offence was committed before him in the former capacity, and as Assistant Collector he might have disposed of the case. The error, we think, may be rectified by his drawing up a fresh order in his capacity of Assistant Collector and filing the proceedings in the Revenue side of his office."

Naba Kumar Banerjee in re, 5 B. L. R. Ap. 45.

Interference by the High Court in a case where the Magistrate had improperly exercised his discretion in removing a case from the file of a Deputy Magistrate.

Hossein Manjee, prisoner, 9 S. W. R. Cr. R. 70.

A case originating with a Magistrate of the District must, under section 88 of the Code of Criminal Procedure (Act XXV of 1861) be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate.

Reg. v. Macdonald, O. J., 22 S. W. R. Cr. R. 6.

The High Court under sections 64 and 69 of the Code of Criminal Procedure (Act X of 1872) directed the preliminary investigation in this case in which the accused was charged with criminal breach of trust to be held in Calcutta; the place where the offence charged was, if not wholly, at all events partly, committed.

Vilaitee Khanum v. Meher Ali, 24 S. W. R. Cr. R. 4.

The Magistrate of the District has authority to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. The Magistrate, having in the exercise of his authority withdrawn any case, finds that it did not come within the jurisdiction of his Magistracy, he would not merely be competent but bound to refuse to proceed further with the case.

Ramzan Ali v. Durpo Komilla & another, 24 S. W. R. Cr. R. 58.

Where the Magistrate of the District had procured the initiation of a number of prosecutions against the same person, and one of them which had resulted in conviction, came up before him in appeal, the High Court, considering that it was not altogether seemly that he should hear the appeal, ordered its transfer to the Sessions Judge. An accused person is entitled to have conveyed to him by the process, whether summons or warrant, the same amount of information relative to the accusation made against him, which should specify not only the technical designation of the offence, but the acts for which the accused would have to answer. In all cases in which a Magistrate refers a complaint already initiated to a subordinate Magistrate for inquiry, the procedure adopted for the purpose ought to conform either to section 44 or or section 49 of the Criminal Procedure Code (Act X of 1872).

Zuhiruddin Hossein v. The Queen, 25 S. W. R. Cr. R. 27; S. C. 1 I. L. R. Calc. 219.

Where it is for any reason desirable to transfer the trial of a criminal case from one District Court to another, the proper course is to apply to the High Court, in its judicial capacity, on affidavits in the usual way.

Louis, J. in re & in re Act VI of 1868, (B. C.), 15 B. L. R. App. 14.

In a case transferred to the High Court under section 147, Act X of 1875, the Court has no power to give costs.

Semble :—The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the judicial officers of all criminal Courts subject to the Act.

Reg. v. Upendronath Doss & another, 1 I. L. R. Calc. 356.

In an application for the transfer of a case under section 147, Act X of 1875 (High Court's Criminal Procedure Act) in which the prisoner has been convicted and is undergoing imprisonment, it is in the discretion of the Court to order, for sufficient *primâ facie* cause shown, that the case be removed, without notice to the Crown.

Empress v. Gasper & others, 2 I. L. R. Calc. 278.

A charge was made against the accused of using criminal force under section 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and without disbelieving it, decided it did not amount to the offence charged. Held, that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. Held, also, it was not a case which the Court could transfer under section 147 of the High Court's Criminal Procedure Act.

Empress v. Nobo Gopal Bose, 6 I. L. R. Calc. 491.

Before the transfer of a case from one criminal Court to another can be made, in cases in which the accused objects to the transfer, the prosecution must bring forward the very best evidence to prove that a fair trial cannot be had in the district in which the case is ordinarily triable.

Teacotta Shekdar v. Ameer Majee, Hafizpaikar & others, 8 I L. R. Calc. 393. S. C. 10 C. L. R. 229.

Before a Magistrate of a district can transfer a case from a Court subordinate to him to any other subordinate Court, notice of such intended transfer should be served upon the parties, so as to enable any or either of the parties to come forward and show cause why such transfer should not be made.

Dwarkanath Banerjee, petitioner, 6 C. L. R. 279.

Where it appeared that the only officers in the district of P. otherwise competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the district, were, by reason of their connection with that Committee, interested in the result of the appeal, the High Court directed that the petition of appeal,

together with all papers connected therewith should be forwarded to the Sessions Judge of the 24-Pergunnahs to be dealt with as an appeal presented in his own Court.

Umrao Singh v. Fakir Chand in re, 3 I. L. R. All. 749.

Magistrates of Districts should exercise the powers conferred on them by section 47 of Act X of 1872 only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a case applies to have it withdrawn from the Magistrate inquiring into or trying it and referred to another Magistrate, the Magistrate of the District should give the other party notice of such application, and an opportunity of showing cause why such applicatiou should not be granted.

Where the accused in a criminal case applied to the Magistrate of the District, after the evidence of the complainant and his witnesses had been taken, to withdraw such case from the Subordinate Magistrate trying it and to try it himself, such application not containing any sufficient reason justifying the granting of the same, and the Magistrate of the District, without giving the complainant notice of such application or opportunity of showing cause against it, and without stating any reason, withdrew such case from the Subordinate Magistrate trying it, and referred it to another for trial, the High Court set aside the order of the District Magistrate, and of the Magistrate to whom such cases was referred for trial, and directed the Magistrate from whom it had been withdrawn to proceed with it.

Reg. v. Ruttee Ram & others, 2 N. W. P. Rep. All. 21.

A Magistrate of a district under the circumstances detailed, held incompetent to transfer to a Deputy Magistrate a case in which four persons were specially committed by a Moonsiff to such Magistrate for investigation of certain charges of forgery, perjury, &c.

Reg. v. Abdoollah, 2 N. W. P. Rep. All. 401.

Section 273 of the Criminal Procedure Code (Act XXV of 1861), authorizes the Magistrate of a district or Division to transfer proceedings under Chapter XIX of that Code to his subordinates.

Reg. v. Kullian Singh & others, 2 N. W. P. Rep. All. 468.

Where a Magistrate of a district brought a partly heard case on to his file, recorded the rest of the evidence, and passed a decision on the whole of the evidence: Held, that such a proceeding was not a legal trial.

Reg. v. Nurput Singh, 4 N. W. P. Rep. All. 86.

Under section 171 of the Criminal Procedure Code (Act XXIV of 1861), a Court has no power to send a case to be investigated by the Magisterial authorities, but must specify the Magistrate by whom the investigation is to be made.

Reg. v. Syud Assuf Ali Khan, 3 N. W. P. Rep. All. 126.

Where a Moonsiff, under the provisions of section 19 of Act XXIII of 1861, makes a matter over to a Magistrate for investigation, the Magistrate has no power to transfer to a Deputy Magistrate a case so duly sent to him.

Reg. v. Adapa Venkanna, 4 I L. R. Mad. 327.

Pending inquiry into a charge of house-breaking, the second class Magistrate of B Division was transferred to A Division. The case was transferred to his file by the District Magistrate. In the course of inquiry it appeared to the second-class Magistrate that the offence committed was robbery and therefore not triable by him. Proceedings were accordingly stayed, and the case submitted to the Magistrate of the Division. The Magistrate of the Division considering he had no jurisdiction as the offence was not committed in his Division, forwarded the case to the Magistrate of the District. The Magistrate of the District ordered that an inquiry should be held, and that the case should be committed to the Sessions by the second-class Magistrate if there was sufficient evidence. The second-class Magistrate accordingly committed the case to the Sessions. Held, that the order of the District Magistrate was illegal.

Reg. v. Velayudam, 4 I. L. R. Mad. 233.

A Magistrate, to whom a case is referred, under section 46 of the Criminal Procedure Code (Act X of 1872) for enhanced punishment, has no power to send the case for inquiry to another Magistrate.

Sithapathi Nayudu v. The Queen, 6 I. L. R. Mad. 32.

Statutes are not to be held to be repealed by implication unless the repugnancy between the new provision and the former statute be plain and unavoidable. Section 29 of the Letters Patent of 1865 empowers the High Court to transfer for trial before itself an appeal to the Court of Sessions from the sentence of a District Magistrate, and this power has not been affected by section 64 of the Code of Criminal Procedure, 1872, which authorizes the High Court to transfer an appeal from one subordinate Court of criminal jurisdiction to another.

Arunachella Reddi & others, petitioners, 5 Mad. Rep. 212.

The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made without risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid.

Proceedings of 10th Nov. 1870, 6 Mad. Rep. Rul. 2.

When a civil or criminal Court sends a case for investigation to a Magistrate under section 171 of the Code of Criminal Procedure (Act XXV of 1861) the Magistrate to whom the case is sent must himself hold the investigation.

Proceedings of 17th Jan. 1872, 7 Mad. Rep. Rul. 2.

Section 273 of the Criminal Procedure Code (Act XXV of 1861) applies only to criminal cases brought before the Magistrate of the District &c., either on complaint preferred direct to such Magistrate, or on the report of a police officer. There is no provision of the Code which authorizes a Magistrate acting under section 68 of the Code to refer the case for enquiry or trial to another Magistrate. Section 68 merely authorizes him to take cognizance of offences without complaint and to issue summons or warrant.

Shankar Abaji Hoshing, 6 Bom. Rep. Crown Cases, 69.

The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate.

Reg. v. Ramdas Samaldas, 12 Bom. Rep. 217.

Semble:—That the "case" mentioned in section 147 of the High Court's Criminal Procedure Act, X of 1875, must refer to some question in the nature of a criminal proceeding and not to a matter of a *quasi* civil character, such as the reference to a Police Magistrate contemplated in section 115.

Empress v. Kallu, 4 I. L. R. All. 366.

A Magistrate of a division of a district made over, under section 44 of Act X of 1872, a case of theft for trial to a Magistrate of the third class, who was on tour in his division, in the discharge of his public duties. The latter, who had jurisdiction, found the accused person guilty, and considering that the accused person ought to receive more severe punishment than he was competent to inflict, under the provisions of section 46 of Act X of 1872 submitted his proceedings to the former. The former thereupon, under the provisions of the same sections passed sentence on the accused person. Held, that the latter Magistrate was subordinate to the former, within the meaning of section 41 of Act X of 1872 and the procedure of the Magistrate was therefore according to law. Held, also that, assuming that the latter Magistrates was not "subordinate" to the former, the provisions of section 284 of Act X of 1872 would not have been applicable, as those provisions do not refer to the illegality of a sentence or to the case of a Magistrate transferring a case who has no power of transfer, but to the invalidity of a conviction for want of jurisdiction.

Kopalli Kotaiya & another, petitioners. Weir, 355.

Where a superior Magistrate, after taking the evidence for the prosecution and drawing up a charge, transferred the proceedings to a subordinate Magistrate, and the latter, after obtaining the consent of the accused, proceeded to take the evidence for the defence and pass judgment: it was held, that the proceedings were void under section 34, clause (1), and that the defect could not be cured by the consent of the accused.

P. Ramasami Aiyar & others, accused. Weir, 235.

A subordinate Magistrate in charge of a taluq, not being a Magistrate in charge of a division of a district, has no power to transfer a case under section 44.

Sabapathi Mudali, petitioner. Weir, 236.

A transfer of a case by one subordinate Magistrate to another subordinate Magistrate, though irregular, will not, in virtue of section 32, clause 1, render the proceedings void.

Proceedings of 22nd May, 1865. Weir, 236.

A reference by a subordinate Magistrate under section 45 to a District or Divisional Magistrate should be made by a brief report explaining the nature of the case. All the proceedings held by the subordinate Magistrate should be submitted for the information of his superior, who will nevertheless proceed altogether *de novo*.

(See section 346, Act X of 1882.)

Proceedings of 26th August, 1862. Weir, 280.

A Sessions Judge cannot return to the Magistracy for trial a case which has been committed to his Court. He should try it himself with reference to note 3 prefixed to the Schedule of the Code, pointing out to the Magistrate; if necessary, that it ought not to have been sent up to the Court of Session.

PARDON.

Reg. v. Chundee Churn Banerjee, 6 S. W. R. Cr. R. 94.

A Magistrate is competent to tender a pardon to any person. The fact of such party being directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown under section 209 of the Code of Criminal Procedure (Act XXV of 1861) (see also In the matter of Nistarinee Dabia, petitioner, 7 S. W. R. Cr. R. 114).

Reg. v. Petumber Dhoobee, 14 S. W. R. Cr. R. 10.

Where a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge, in exercising the power given him by section 211 of the Code of Criminal Procedure (Act XXV of 1861) ought not to try him along with the prisoners in whose case he has already given testimony.

Reg. v. Sajowpa, 7 S. W. R. Cr. R. 100.

Application for pardon or mitigation of punishment for a political offence, (*e. g.*, for waging war against a Power in alliance with the Queen) should be made to the Executive Government.

Nistarinee Debia in re, 7 S. W. R. Cr. R. 114.

A Sessions Judge is not competent, before a trial, to instruct a Magistrate to tender a pardon under section 210 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Bipro Dass & others, 19 S. W. R. Cr. 43.

Held, that a Sessions Judge acted irregularly in at once trying and convicting a person who had been granted a conditional pardon by the Magistrate, and who had been sent up to the Sessions Court as a witness for the Crown. The Sessions Judge was directed to order the Magistrate to commit the accused to the Sessions for a fresh trial after hearing his defence and examining his witnesses.

Empress v. Nobinchundra Banikya, 8 I. L. R. Calc. 560. S. C. 10 C. L. R. 369.

At a Sessions trial the Judge, after acquitting the prisoner, passed an order withdrawing a pardon already granted to an approver (who had given his evidence as such approver before the Sessions Court), and ordered his commitment. The approver was charged, tried, and found guilty. Held by MITTER, J. that the order withdrawing the pardon and committing the approver was contrary to the provisions of section 349 of the Criminal Procedure Code (Act X of 1872) the words "before judgment has been passed" being words inserted in the section to put a limit to the time within which the power of withdrawal of the pardon conferred in the Court of Sessions may be actually exercised; and that therefore the trial of the approver was illegal. The power of directing commitments conferred upon the Sessions Court by section 349 of the Criminal Procedure Code can be exercised only before judgment has been passed.

Held by MACLEAN, J. that it is not necessary that the order should be made before judgment is passed, but that it must appear to the Judge before he passes judgment, that the conditions of the pardon have not been complied with; and that, in the present case, it was impossible to hold, that because the actual order of commitment of the accused was written (although in the judgment) after the acquittal, therefore it did not appear to the Judge before passing judgment that there were grounds for his order.

Per MACLEAN, J.:—The High Court may, without reference to the Local Government, set aside a conviction made upon a trial improperly originated.

Joyudee Paramanick & others, Appellants in re, 7 C. L. R. 66.

Per FIELD, J.:—There is a grave doubt whether the deposition of an approver, taken before the Committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. Where a conditional pardon, granted to an approver, is withdrawn under section 349 of the Criminal Procedure Code (Act X of 1872) by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver.

Empress v. Asghar Ali, 2 I. L. R. All. 260.

Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons, in offences, none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case, held that, the tender of pardon to such person not being warranted by section 347 of Act X of 1872, he could not legally be examined on oath, and his evidence was inadmissible. Held, also, that the statement made by such person was irrelevant and inadmissible as a confession, with reference to section 344 of Act X of 1872 and section 24 of Act I of 1872.

Reg. v. Hardewa, 5 N. W. P. Rep. All. 217.

A person accused of an offence was offered a pardon, the conditions of which he accepted. On being examined he stated in detail the circumstances of the offence, and named the prisoner as an accomplice. He afterwards retracted his statement. Held, that the statement could not be used as evidence against the prisoner.

Reg. v. Hanmanta & others, 1 I. L. R. Bom. 610.

It is not competent to a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under section 347 of the Code of Criminal Procedure (Act X of 1872). Evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Session, held not relevant, that person not having been acquitted or discharged or convicted.

Proceedings of 26th July, 1866. 3 Mad. Rep. App. 4.

The power given to a Magistrate by section 209 of the Criminal Procedure Code (Act XXV of 1861) cannot properly be exercised except with a view to the committal of a case for trial before a Court of Session.

The proceedings dated 10th November, 1864 (3 Mad. Rep. Appendix 2) are not to be understood as authorising Magistrates to exercise the power conferred by section 209, except in cases which are to be sent for trial before the Court of Session.

Proceedings of 10th Nov. 1864, 3 Mad. Rep. App. 2.

The provisions of section 209, Criminal Procedure Code (Act XXV of 1861) apply to cases triable by the Magistracy concurrently with the Session Court.

Reg. v. Remedios & others, 3 Bom. Rep. Crown Cases, 59.

On a reference by a Session Judge, where certain persons were found guilty of gaming by a Full Power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence whom the Magistrate had pardoned.

Held, that a Magistrate has no power to tender a pardon in a case which he tries himself; but only, under section 209 of the Criminal Procedure Code (Act XXV of 1861) in the case of an offence triable by the Court of Session.

Empress v. Srinop, 12 C. L. R. 226.

A pardon granted under section 349 of Act X of 1872 was withdrawn by the Sessions Judge before the hearing of the whole of the evidence, without proof that the statement made by the person pardoned, was inconsistent except upon most immaterial points, with previous statements by him or contradicted by the evidence, and before any evidence affecting his veracity had been given. Held, that the pardon had been improperly withdrawn.

Queen-Empress v. Sadhee Kasal & others, 10 I. L. R. Calc. 936.

A Sessions Judge cannot tender a pardon to an accused under section 338 of the Criminal Procedure Code (Act X of 1882), where the offence for which he has been committed is not "triable exclusively by the Court of Sessions."

PRELIMINARY ENQUIRY.

Chota Sadoo Peadah v. Bhoobun Chuckerbutty & others, 9 S. W. R. Cr. R. 3.

It is not necessary that the preliminary enquiry contemplated by section 171 of the Code of Criminal Procedure (Act XXV of 1861) should be conducted in the presence of the accused. All the Court (Revenue in this case) making the enquiry has to do, is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate, and the Collector is not bound to dispose of a case of contempt of the lawful authority of a public servant under section 147, Act X of 1859, but it is discretionary with him to proceed under section 171 of the Code of Criminal Procedure.

Govt. v. Mohesh Chunder Banerjee & others, 17 S. W. R. Cr. R. 35.

The Court declined to set aside the preliminary proceedings before the Magistrate, because though there might have been some irregularity in them, they had not been objected to by the parties notwithstanding that they had had full opportunity of doing so. The decision in 12 S. W. R. 49 does not apply to a case where a charge was subsequently drawn up, giving the prisoner full information of the offence which it was intended to prove, still less to an ordinary Sessions case, where the regularity of the preliminary proceedings is not in question under the plea of not guilty.

Rajah Nilmonee Singh Deo Bahadoor v. Oomachurn Roy & another, 19 S. W. R. Cr. R. 49.

Where a Deputy Commissioner held a proceeding in which the accused was charged with forgery and using a forged document, and after calling on the accused during the enquiry to make a statement, but without calling on him to make any further defence, and after hearing the whole evidence both for the prosecution and for the defence, discharged and acquitted the accused: Held, that there had been no trial, but that this was a proceeding under Chapter XII of Act XXV of 1861, that under section 202 of that Act, the Magistrate had discretion to examine the accused, and under section 207 to examine witnesses on behalf of the accused, and under section 225 the

Magistrate when finding there was no sufficient ground for committing the accused to the Sessions, was competent to discharge and acquit him.

Ramkanta Sircar v. Jadub Chunder Dass Byragee, 12 S. W. R. Cr. R. 44.

The previous enquiry provided for by section 146 (Act X of 1872) before a complaint is taken up, ought not to be made after the accused has been brought before the Court under a warrant.

Troylokhanath Biswas & Ramchurn Biswas in re, 3 I. L. R. Calc. 742; S. C. 3 C. L. R. 59.

Where the Magistrate of a division held an inquiry, under section 135 of the Criminal Procedure Code, (Act X of 1872) into the cause of the death of a person found dead under suspicious circumstances, and, without making a specific charge against any person, drew up a report embodying the result of his inquiry, and sent the report to the Magistrate of the district, and subsequently proceedings were taken against one of the witnesses, which ultimately resulted in an acquittal. Held, by the High Court, that there being nothing in the language of section 135 requiring the Magistrate holding such an inquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that therefore the High Court had no power to send for it under section 296 of the Criminal Procedure Code. No analogy exists between a Coroner's Inquest and an inquiry into the cause of death under the Criminal Procedure Code.

Proceedings of 3rd Nov., 1868. 4 Mad. Rep. Rul. 22.

In an inquiry under Chapter XIX of the Criminal Procedure Code (Act XXV of 1861) the defendant should have an opportunity of cross-examining the witnesses produced against him, of making his own statement, and of calling witnesses in his own behalf.

Kolauthey Gounden & another, Appellants. Weir, 403.

An omission on the part of a Sessions Court to hold the preliminary inquiry prescribed in section 471 (Act X of 1872) is not a sufficient ground for reversing the conviction when the omission does not appear to have affected the merits of the case.

Empress v. Juala Prasad, 5 I. L. R. Calc. 62.

An order made under sections 471 of Act X of 1872 sending a case for inquiry to a Magistrate is not necessarily bad because the Court did not make a preliminary inquiry before making such order. The law requires only such preliminary inquiry "as may be necessary."

Held, therefore, where a Munsif, being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points, sent the case for inquiry to the Magistrate under section 471 of Act X of 1872, with a proceeding embodying the facts of the case, and charging the parties respectively with giving false evidence on such points, and there was nothing to show that any inquiry that the Munsif could have made was necessary, or would have put the Magistrate into a better position for dealing with the case than he was in, that the Munsif's proceedings were not bad because he did not hold a preliminary enquiry.

POLICE.

Reg. v. Bheem Manjee, 6 S. W. R. Cr. R. 52.

The police are not at liberty to bind a witness over to appear a month after date. Remarks on the insufficiency of the evidence in this case to warrant a conviction.

Reg. v. Damoo Singh, 8 S. W. R. Cr. R. 36.

Where a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court.

Reg. v. Gowree Singh, 8 S. W. R. Cr. R. 28.

The police may, without any formal complaint, apprehend any person found with stolen property.

Reg. v. Protab Chowkeedar, 2 S. W. R. Cr. R. 9.

The wounding of a thief by a chowkeedar to secure his capture held under the circumstances to be justifiable.

Reg. v. Ram Chunder Sircar, 13 S. W. R. Cr. R. 18.

Remarks upon the objectionable practice of permitting police officers to conduct prosecutions in the Sessions Court.

Reg. v. Rohini Kant Ghose, 1 S. W. R. Cr. R. 15.

A Magistrate has no power to realize the cost of a police constable from an individual.

Reg. v. Dinanath Gangooly, 8 B. L. R. App. 58; S. C. 17 S. W. R. Cr. R. 12.

One Dinanath Gangooly was a head constable in the Bengal Police Force in the District of Howrah. On the 2nd September he was suspended by the District Superintendent of Police, and ordered to remain in the police lines. On the 20th of October 1871, he applied to the Deputy Magistrate, then in charge of the District, to be released from illegal restraint. He was then brought up before the Deputy Magistrate, who passed the following order on his petition:—"I submit this for final orders of the District Magistrate. There is no one in Court to prevent petitioner's free movement, or to show cause why he should not be free, therefore he may go with his leader." Subsequent to this order he left the police lines. On hearing that a warrant was out for his arrest, he, on the 30th November 1871, voluntarily appeared before the District Magistrate, who ordered him to take his trial under section 29 of Act V of 1861 for having disobeyed his superior officer, the

District Superintendent. On the above state of facts, the Magistrate on the 4th of December 1871, convicted him under section 29 of Act V of 1861, and sentenced him to pay a fine of Rs. 30 or in default to undergo rigorous imprisonment for 20 days. Held, that after suspension, the applicant had ceased to be a police officer under section 8 of Act V of 1861, and the act complained of, having been committed subsequent to the suspension, the conviction under section 29 of Act V of 1861 was illegal.

Reg. v. Radhu Singh 8 B. L. R. App. 60; S. C. 17 S. W. R. Cr. R. 34.

Radhu Singh was charged by the District Magistrate with having committed an offence punishable under section 29 of Act V of 1861 in that he did not take personally any prompt action on first receiving information of a breach of the peace likely to take place. The defence was that, when the accused got information of the disturbance, he was at the time *bonâ fide* engaged as a police officer, in enquiring into the case of another party suspected of having committed an offence, and that he could not attend to anything else until he had finished the enquiry. The Magistrate, considering the defence to be no justification of the conduct of the accused in not at once repairing to the scene of the impending riot, convicted him under section 29 of Act V of 1861 and sentenced him to rigorous imprisonment for three months. The High Court was moved to send for the record of the case, and to quash the sentence on the ground that there was no evidence of any offence having been committed punishable under section 29 of Act V of 1861; and that, it being an admitted fact that the accused was actually investigating another case, his refusal to neglect the work he had in hand, and attend to another case, amounted to no offence under section 29 of Act V of 1861.

MARKBY, J. ..... "I think that the defence set up by the prisoner was, if true, an answer to the charge, and one which, if true, ought to have prevailed. His defence was that he was engaged in investigating another case, that is to say, he was engaged upon one of the duties of a police officer. He is charged with violating another of the duties of a police officer, *viz.*, his duty to prevent the commission of offences, and it is one thing to question the conduct of a police officer, as a police officer, in not leaving one case to interfere in another, and another thing to say that he is guilty of an offence under section 29. Before he can be convicted of an offence under section 29, it must be found that he is guilty of more than mere neglect; he must be guilty of a violation of his duty, which must mean an intentional violation, and therefore it was necessary to enquire in this case whether or not the violation of duty was deliberate and intentional, or whether (as the defence is,) however mistaken and erroneous it may have been, it was the result of his opinion that he ought not to quit the performance of one duty to perform another. Therefore I think that the defence set up by the defendant that he was acting to the best of his discretion, has not been disposed of..... .... I think, therefore, that we are bound in this case to quash the conviction and order the prisoner's release."

Borodakant Mookerjee v Kali Bhutta-

Where there is a *primâ facie* case (of abduction in this instance) made out, a Magistrate should send for the witnesses, and form his opinion on the evidence, and not, merely

charjee & others, 9 S. W. R. Cr. R. 21.

on the strength of the police report, reject the complainant's petition and refer him to the civil Court.

Sheo Surun Sahai v. Mahomed Fazil Khan, 10 S. W. R. Cr. R. 20.

The general exception provided by section 79, Penal Code and the power conferred by clause 5, section 100 of the Code of Criminal Procedure (Act XXV of 1861) was held not to protect a police officer who did not act in good faith, that is, with due care and attention. The clause 5, section 100, Code of Criminal Procedure refers to property which is proved to have been stolen, and not to anything which a police officer may choose to imagine has been stolen.

Boroda Kant Mookhopadhya, Case of, 15 S. W. R. Cr. R. 17.

A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under section 29 of Act V of 1861 in cases where the proof is insufficient to bring the case under section 218 of the Penal Code.

Reg. v. Bolaki Lall, 19 S. W. R. Cr. R. 7.

Mere rashness or negligence on the part of a police officer before ordering the search of a man's house for stolen property, does not constitute an offence amounting to violation of duty under section 29, Act V of 1861. The violation there intended must be wilful intentional violation of some clear duty or other.

Reg. v. Basooram Dass, 19 S. W. R. Cr. R. 36.

Per GLOVER, J.:—Where a Sub-Inspector of Police is charged with having detained prisoners for more than 24 hours, it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as section 124, Act X of 1872 imperatively lays down that accused persons are on no account to be detained beyond that time except under special order of the Magistrate,—which was not obtained in this case.

Reg. v. Junglelall, 19 S. W. R. Cr. R. 40.

Where a chowkeedar was charged under section 218, Penal Code, with having made a false entry in a chowkeedaree attendance-book, with a view to support a charge which was made against a Sub-Inspector of having made a false report regarding the length of absence from duty of another chowkeedar, it was held that the intention was too remote to fall within section 218.

Syed Futteh Mahomed, petitioner, 21 S. W. R. Cr. R. 30.

Under Act V of 1861 a police officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by section 44 of that Act to keep, and the omission to give such information brings him within the purview of section 177 of the Penal Code.

Grishchunder Nundee, petitioner, 26 S. W. R. Cr. R. 8.

Under section 23, Act V of 1861, a Police officer is not bound to arrest a person against whom no proceedings have been directed if he believes that he has not sufficient grounds for apprehending him.

The failure of a police constable to resume his duty on the expiration of his leave, does not constitute an offence under section 29, Act V of 1861 (Police Act).

Empress v. Janokenath Gupta, 6 I. L. R. Calc. 625; S. C. 8 C L. R. 56.

A chaukidar, or village-watchman, is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chaukidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder, and consequently such Chaukidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under section 221 of the Penal Code.

Empress v. Kallu & another, 3 I. L. R. All. 60.

Circumstances may exist in which a special order of the nature contemplated in section 152 of the Criminal Procedure Code (Act XXV of 1861) may properly be passed; for instance, if, in the case into which the police are inquiring, the suspected or confessing parties have voluntarily offered to conduct the police to a place where the stolen property will be found, and such offer cannot be carried into execution within the limited period of twenty-four hours, the powers which the above-mentioned section confers on a Magistrate may be rightly exercised.

Reg. v. Rugunath Pershad, 3 N. W. P. Rep. All. 275.

But to return accused persons to the police, that they may be forced to give a clue to the stolen property, is to abuse the provisions of section 152, with a view to the breach of the injunctions of section 146 of the Criminal Procedure Code.

Section 42 of Act V of 1861 has no bearing on, or connection with, section 29 of the Act.

Reg. v. Hazar Mir Khan, 7 N. W. P. Rep. All. 237.

The prosecution of a police patel, for an offence committed by him in his official capacity as such, needs no previous sanction. The provisions of the Bombay Village Police Act (VIII of 1867) section 9 as amended by the Bombay Police Amendment Act (I of 1876) render a police patel removable from his office without the previous sanction of Government and, therefore, section 466 of the Criminal Procedure Code (Act X of 1872) does not apply.

Imperatrix v. Bhagwan Devra, 4 I. L. R. Bom. 357.

By Madras Act III of 1865 a native Deputy Magistrate has power to try police officers above the rank of a private charged with offences under the Madras General Police Act (XXIV of 1859) notwithstanding the proviso in section 50 of the latter enactment.

Proceedings of 7th July 1869, 4 Mad. Rep. Rul. 54.

Proceedings of 13th June 1870, 5 Mad. Rep Rul. 25.

A European British subject was convicted by the Cantonment Magistrate under section 48 of the Police Act (Act XXIV of 1859). Held, that the Magistrate had no jurisdiction.

Proceedings of 9th Aug. 1871. 6 Mad. Rep. Rul. 31.

Accused, a police constable, was convicted under section 44 of Act XXIV of 1859 (Police Act) of ceasing to perform the duties of his office. The evidence showed that he had gone to sleep while posted as a sentry over the jail. Held, that the accused was not guilty of the particular species of offence of which he was convicted; he was, however, guilty *primâ facie* under the section. Going to sleep while on guard is an offence punishable under section 10.

Proceedings of 25th Aug. 1871. 6 Mad. Rep. Rul. 34.

There is no Act of the Legislature which empowers either the District Magistrate or the local Government to define a "town" for the purposes of section 48, Act XXIV of 1859.

Proceedings of 10th Nov. 1871. 6 Mad. Rep. Rul. 45.

A police constable was tried and convicted by the Assistant Agent of Vizagapatam under section 44 of Act XXIV of 1859, and sentenced to fine and imprisonment. On appeal, the Agent reversed the conviction and sentence on the ground that there had been irregularity of procedure on the part of his Assistant in not recording evidence for the prosecution, and in only taking down, the substance of the prisoner's statement, and not the full statement as made. Held, that the question was, whether there had been such error and irregularity on the part of the Assistant Agent as to prejudice the accused and to occasion a failure of justice. That if not, the order reversing the conviction was rendered bad in law by sections 426 and 439 of the Criminal Procedure Code, (Act XXV of 1861). That the accused did not appear to have been prejudiced. Consequently, the order of the Appellate Cout was set aside and a re-hearing directed.

Proceedings of 11th March, 1872. 7 Mad. Rep. Rul. 4.

Section 44 of Act XXIV of 1859 (Police Act) applies only to police officers enrolled and appointed in the manner prescribed in sections 8, 10 and 11 of the Act. Village Káválgárs not being so appointed are not punishable under section 44.

Proceedings of 13th June, 1872. 7 Mad. Rep. Rul. 7.

Accused, a police constable, was on duty at the outer gate of a Centre Jail. Quitting his post inside the gateway and leaving the gate open he went to sleep outside. For this violation of duty, he was convicted and sentenced under section 44 of Act XXIV of 1859. Held, that the conviction was legal.

Proceedings of 14th Aug. 1872, 7 Mad. Rep. Rul. 10.

Accused was convicted under clause 1, section 48 of the Police Act. The facts found were that he rode an untrained bullock, which he could not control, in the public street. Held, that the evidence warranted the conviction.

Reg. v. Bapuji, Gangaram, 7 Bom. Rep. Crown Cases, 2.

An order issued under section 28 of the Bombay District Police Act (VII of 1867) need not be in writing—disobedience to a verbal order given under that section is punishable under section 29. The words of section 28 of the District Police Act, which authorise the police "to keep order *in the neighbourhood* of places of worship during the time of public worship," confer upon the police a power of regulating traffic, and putting a stop to noises, in the neighbourhood of places of worship during the time of worship, but do not limit their general powers of keeping order *at and within* all places of public resort, temples, jatras, or the like, when necessary.

Reg. v. Ukha Sav, 7 Bom. Rep. Crown Cases, 88.

Conviction of a Police Patil for neglecting to report an encroachment made by the villagers on the public road reversed, as the circumstances of the case did not bring it within the provisions of section 9 of Bombay Act VIII of 1867.

Reg. v. Lukhma Chango, 9 Bom. Rep. 153.

Section 27 of Bombay Act VIII of 1867 does not empower the police to prohibit the use of music in private houses.

Govt. v. Karamut Khan, 1 N. W. P. Rep. (Agra) 1.

A police officer (Chief Constable) being authorized by Law to depute his subordinate to proceed to the place where crime is reported to have been committed cannot be supposed to have contravened the Law by not proceeding to the spot himself; and therefore the conviction of the prisoner on the charge of wilful violation of duty was illegal.

Govt. v. Girdhareelall & another, 1 N. W. P. Rep. (Agra) 24.

Held, that the summary conviction and punishment of two police officers under section 29, Act V of 1861 by a Cantonment Magistrate without formal trial, was irregular and illegal. Held, also, that although the Magistrate of a district is competent to order the removal of any particular case from the file of a subordinate Court to his own, it is doubtful whether he can by general proceeding direct the transfer of cases which have no existence and which are not pending before any of his subordinates. Held, also, that a Cantonment Magistrate has power to try cases under section 29 of the Police Act without complaint.

Ram Kumar, petitioner, in re, 10 C. L. R. 521.

Section 29 of Act V (B. C.) of 1861 is not applicable to persons who are not police officers. Where a Magistrate acting merely on certain information contained in a letter addressed to him convicted a person for obstruction and nuisance, the High Court set aside the conviction on the ground that there was no complaint and no evidence.

Venkatigadu & others, Appellants. Weir, 130.

The Mysore Police do not answer the description of public servants within the meaning of the Penal Code.

A Taliari of a village in British territory is not a police officer within the meaning of section 353, Indian Penal Code.

Where an official who assumes or discharges police functions has not been enrolled and has not received a certificate of enrolment, he is not a police officer in the execution of his duty so as to affect third parties.

Proceedings of 28th June, 1867. Weir, 550.

No person who has not been duly appointed under section 2 of Act XXIV of 1859 (Madras) can be held to be a police officer within the meaning of section 44 of the Act.

Proceedings of 31st October, 1865. Weir, 551.

Police officers are liable to punishment, under section 44 for neglect of duty defined in section 23 of the Act, notwithstanding the repeal of the latter section.

Proceedings of 3rd October, 1878. Weir, 553.

The ruling in VII M. H. C. Rep. App. VII followed and affirmed.

Proceedings of 29th March, 1878. Weir, 554.

A Sessions Court has not jurisdiction to try a person accused of an offence under section 43 (Act XXIV of 1859). The trial should be held before a Magistrate.

Proceedings of 19th Feb. 1880. Weir, 554.

A police officer (assuming him to be empowered by law to make a search) has a discretion, on sufficient grounds appearing, to refuse to search a house and a refusal in such circumstances to make a search is not a violation of duty punishable under section 44. A discontinuance of a duty undertaken without proper authority is also not a violation of duty within the meaning of the section.

Proceedings of 21st July, 1879. Weir, 555.

Section 46 (Act XXIV of 1859) construed.

Proceedings of 22nd April, 1879. Weir, 559.

Procedure to be followed in enforcing a sentence of fine adjudged under section 48 of the Police Act (XXIV of 1859) defined.

Proceedings of 10th March, 1880. Weir, 560.

Section 48 does not authorize a sentence of whipping.

Proceedings of 15th Nov., 1879. Weir, 562.

Cutting meat in a public street is not an offence punishable under section 48, clause 1 of the Police Act.

Judoonath Mookerjee in re, Bourke's Rep. 186.

J. M. a clerk in the Police Magistrate's office, having been convicted under section 2 of Act XLVIII of 1860, as a person employed in a police office, a rule for quashing the conviction was made absolute. Held:—That the words "police office" in section 2 of Act XLVIII of 1860, do not apply of a Police Magistrate.

PROSECUTOR.

Reg. v. Ramjai Mazumdar, 6 B. L. R. Ap. 46.

Private prosecutor not allowed to appear on a reference to the High Court, under section 434 of the Criminal Procedure Code.

Chandicharan Chatterjee v. Chandra Kumar Ghose & others in re, 5 B. L. R. App. 70; S. C. 14 S. W. R. Cr. R. 23

A counsel or pleader is entitled to appear and act on behalf of the prosecution in the criminal Courts.

Sudduruddeen Sircar v. Ram Joy Mojoomdar, 14 S. W. R. Cr. R. 51; S. C. 6 B. L. R. Ap. 46.

A private prosecutor cannot move a Court of Sessions under section 419 of the Code of Criminal Procedure (Act XXV of 1861) in a case which is not before that Court in appeal, though he may do so under section 435 of that Code in cases in which the Court of Sessions can interfere. A private prosecutor has no right to be heard before the High Court in a case in which he could not be heard in the Sessions Court.

Bharut Chunder Sein, petitioner, 14 S. W. R. Cr. R. 74; S. C. 8 B. L. R. 423 note.

A Sub-Registrar, who is also a Magistrate, cannot investigate a case against one of his subordinates in the Registry Office and afterwards himself try and convict him.

Gungadhur Sircar, petitioner, 23 S. W. R. Cr. R. 14.

An advocate of the High Court may appear on behalf of the prosecution in the Court of Sessions and conduct the prosecution without being specially empowered by the Magistrate of the district for that purpose.

Empress v. Butokristo Dass & another, 6 I. L. R. Calc. 59; S. C. 6 C. L. R. 374.

With the exception of the Advocate-General, Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate.

Reg. v. Kashinath Dinkar & others, 8 Bom. Rep. Crown Cases, 126.

Appointment of the Magistrate, who in the first instance had tried and convicted the accused, to be Crown Prosecutor to conduct an inquiry subsequently directed in the same case, censured as being unprecedented and objectionable. A public prosecutor should be without a personal interest in the cases which he conducts. Prisoners should be allowed to have free converse with their vakils out of the hearing of the police officers in charge of such prisoners.

It is undesirable that Magistrates whose decisions are under appeal, or who have been engaged in promoting the prosecution, or police officers concerned in a case, should sit on the Bench beside, or converse privately in Court with, the Judge who is engaged in trying the prisoner's appeal. If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate upon oath or solemn affirmation in the same manner as an ordinary witness.

Narayan M. Pendshe in re, 11 Bom. Rep. 102.

Whether or not a private complainant is permitted, under section 59 of the Code of Criminal Procedure (Act X of 1872) to conduct a case as prosecutor, he may instruct Counsel who shall be entitled to appear under No. 7, Chapter XI of the High Court Rules, and the Public Prosecutor may, thereupon, avail himself of the Counsel's services under section 60. The effect of section 235 of the Code, read with sections 59 and 60, is to make every case tried by the Court of Session, a case falling within the provisions of section 60, that is to say, the Public Prosecutor may thereupon avail himself of the services of Counsel retained by a private individual, and in so doing, he does not deprive himself of the management of the case. Where the assistance of Counsel has once been accepted, that assistance is not excluded at the stages of the trial (summing-up by the prosecutor and his reply) to which sections 251 and 252 apply.

RECOGNIZANCE.

Reg. v. Annund Chunder Chuckerbutty, 3 S. W. R. Cr 33.

Recognizances are not necessary from persons acquitted by the Sessions Judge.

Reg. v. Chowdry, 2 B. L. R. App. 28.

A charge of criminal trespass and mischief was dismissed. Thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizance to keep the peace. *Held*, it was not necessary also to issue a summons to them under section 283 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Dassoo Manjee, 11 S. W. R. Cr. 39.

The estreating of recognizances is a proceeding resorted to where persons who have undertaken to give evidence in a criminal enquiry have failed without just excuse to attend and have thus created an obstruction to public justice, but where a Magistrate thinks it proper to estreat their recognizances, he ought to allow them an opportunity of justifying their default.

Reg. v. Deo Nundun Sing, 12 S. W. R. Cr. 16.

After calling upon a person, under section 282 of the Code of Criminal Procedure (Act XXV of 1861) to show cause why he should not enter recognizances to keep the peace, a Magistrate should not order the defendant to enter into such recognizances without taking evidence, or making enquiry whether the defendant had committed any act which might probably occasion a breach of the peace.

Reg. v. Gendoo Khan, 7 S. W. R. Cr. R. 14.

The order of the Magistrate directing the prisoner on the expiration of his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary.

Reg. v. Kally Bhyrub Sandyal, 11 S. W. R. Cr. R. 52.

Before a recognizance can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of one of two rival parties for whose benefit the breach took place is not sufficient.

Reg. v. Durga Das Bhuttacharjee, 7 B. L. R. Ap. 37.

A surety who was bail for an accused person having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail-bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, first, of the accused, and secondly, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to show cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal.

Reg. v. Kalinath Biswas, 6 B. L. R. Ap. 116 & 15 S. W. R. Cr. R. 18.

A. was bound over to keep the peace for a year. Before the expiry of the period he was involved in fresh disputes with other persons. The Deputy Magistrate, instead of referring the case to the Court of Session under section 298 of the Code of Criminal Procedure, (Act XXV of 1861) directed A. to enter into another recognizance for a further period of one year. *Held*, the order was illegal.

Reg. v. Lall Behary Singh & others, 11 S. W. R. Cr. R. 50.

A Magistrate has no power to make an order that an accused person should enter into a bond to keep the peace until after an adjudication that it is necessary for the preservation of peace to take a bond from him, and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made.

Reg. v. Mewa Lall, 13 S. W. R. Cr. R. 53.

Where a surety conditioned that he would be responsible for the continued presence of an accused person at one Court (Nowadah) it was held that the surety was released from liability under his recognizance by the permission which the Court at Nowadah gave the accused, without the surety's consent, of leaving that place on business, and also by the subsequent transfer of the case to another Court.

Reg. v. Poran Jolaha, 11 S. W. R. Cr. R. 47.

In a case which is made over for investigation to the police, the prosecutor and his witnesses should be required, under section 151 of the Code of Criminal Procedure (Act XXV of 1861) to enter into recognizances to attend and give evidence.

A recognizance binding over an accused person to appear to answer a charge should specify the particular day on which he should be in attendance in Court.

Reg. v. Torab Gujar & another, 3 N. W. P. R. 126.

Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under section 296 of the Criminal Procedure Code (Act XXV of 1861) for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner.

Reg. v. Seetaram Hazra, 1 S. W. R. Cr. R. 45.

It is not necessary that there should be a conviction of rioting in order to admit of a Magistrate taking recognizances to keep the peace.

Reg. v. Sham Sunder Chowdhry, 2 B. L. R. Ap. Cr. 11.

A. executes in District T. a recognizance to keep the peace towards B. A. was afterwards convicted in District S. of having assaulted B. in that district. Held, A. had forfeited his recognizance, and the Magistrate in District T. could proceed against him under section 293 of Criminal Procedure Code (Act XXV of 1861).

Behari Patak v. Mahomed Hyat Khan; A. D. Dunne v. Hemchandra Chowdry, Gov. v. Behari Lall Brojobasi, 4 B. L. R. F. B. 46; S. C. 12 S. W. R. Cr. 60.

Held, (GLOVER, J. *dissentiente*) the report of a police officer, though it justifies the issuing a summons, is not sufficient ground on which to bind a man over in a recognizance to keep the peace. The Magistrate must adjudicate on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses.

The *onus* lies on the person who has obtained the summons to prove that the defendant is likely to commit a breach of the peace.

Keshub Chunder Sandyal & 3 others, 6 S. W. R. Cr. R. 1.

An unproved charge of false imprisonment is not the credible information contemplated in the law, on which a Magistrate may take recognizances to keep the peace.

Kalikant Roy Chowdry in the case of, 3 B. L. R. Ap. 155; S C. 12 S. W. R. Cr. R. 54.

Before a Magistrate can declare that recognizances to keep the peace have been forfeited, he must record legal evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace.

Jaha Bux v. Gov., 6 B. L. R. Ap. 66; & 15 S. W. R. Cr. R. 14.

On the application of A. a recognizance was taken from B. that he would keep the peace for six months under a penalty of Rs. 500. Before the expiry of the period B. assaulted C. Held, that there was a forfeiture of the recognizance.

Abhaya Chowdry v. T. Brae, 6 B. L. R. Ap. 148; S. C. 15 S. W. R. Cr. R. 42.

The existence of a dispute likely to cause a breach of the peace must be first proved by legal evidence before the Magistrate can proceed to call upon the parties to enter into recognizances to keep the peace. The report made by a police officer that there is a likelihood of there being a breach of the peace is not legal evidence to prove the existence of any dispute likely to cause a breach of the peace.

Birreshuree Peshad & another, petition of, 6 S. W. R. Cr. R. 93.

It should appear on the face of a Magistrate's order that he had received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace.

Kally Churn Sing v. Bunker Singh & others, 7 S. W. R. Cr. R. 26.

A Magistrate cannot bind down parties to keep the peace beyond the term of their first recognizance, without proceeding as prescribed by section 290 of the Code of Criminal Procedure (Act XXV of 1861).

Chowdhry Sheo Nundun Prosad v. Chowdhry Nil Kanth Prosad, 13 S. W. R. Cr. R. 44.

Where a Magistrate who apprehended a breach of the peace, eventually discharged the recognizances which he had compelled the parties to give, it was held that he exceeded his jurisdiction when he also gave directions as to the disposition of the property in dispute between the parties.

Imamoodeen Bhina, petitioner, 13 S. W. R. Cr. R. 73.

In a case in which an accused was charged with voluntarily causing grievous hurt, the Magistrate convicted him of that offence, and also ordered him to furnish recognizances to keep the peace; Held, that as the Magistrate had jurisdiction under Chapter XVIII of the Code of Criminal Procedure (Act XXV of 1861) to pass the latter order

regarding recognizances, the Sessions Judge could not, on appeal, while upholding the conviction for grievous hurt, cancel the order as to taking recognizances, the evidence on the record being sufficient for that purpose.

Koonjebehari Chowdhry v. Eknath Gurain, 15 S. W. R. Cr. R. 43.

The summons to a person to show cause why he should not be required to furnish recognizances to keep the peace should, under section 283, Code of Criminal Procedure (Act XXV of 1861) set out the substance of the information against him. When the party summoned shows cause, the Magistrate in taking evidence should look not merely to the question of possession, but also whether he is satisfied that there was a probability of a breach of the peace.

Gobind Sooboodhee & others, petitioners, 15 S. W. R. Cr. R. 56.

An order calling for recognizances under section 280 or for security under section 281, Code of Criminal Procedure (Act XXV of 1861) must be passed at the time of deciding the original case. If no such order is then made, subsequent proceedings must be taken under section 282 and the parties summoned to show cause.

Jehan Buksh, petitioner, 15 S. W. R. Cr. R. 87.

Per AINSLE, J. :—In a case in which proceedings are taken for forfeiture of recognizances, the person against whom they are held is competent to give evidence on oath on his own behalf.

Quære :—When recognizances are forfeited is a Magistrate bound to forfeit the whole amount of the bond, and is the power of reducing the sum to a penalty corresponding to the breach of the peace confined only to the Government.

Ram Coomar Bonerjee v. Rajah Gopal Singh Deb, 17 S. W. R. Cr. R. 54.

It is illegal and contrary to the provisions of section 282, Code of Criminal Procedure, (Act XXV of 1861) to take recognizances from one person, in order to prevent another from committing a breach of the peace.

Gooroo Dass Roy, petitioner, 18 S. W. R. Cr. R. 57.

Notwithstanding that a person has been bound down by bond to keep the peace for a stated period, a Magistrate has power, under section 290 of the Code of Criminal Procedure, (Act XXV of 1861) to increase the amount of the security required before the expiry of that period.

Haranchunder Roy petitioner, 18 S. W. R. Cr. R. 63.

Where a person has been bound down by recognizance not to commit a breach of the peace, the amount of the recognizance cannot be recovered from him if he is guilty of an offence, such as theft, which does not amount to a breach of the peace, or which is not likely to occasion a breach of the peace.

Reg. v. Omertolall & Buseerooddeen, 19 S. W. R. Cr. R. 3[illegible]

Parties who are not stated by a Magistrate to be likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, cannot be called upon to enter into recognizances to keep the peace, simply because they did not interfere when they

might have done so between the persons actually quarrelling so as to prevent a riot, their laches in this respect not bringing them within the purview of section 282, Code of Criminal Procedure.

Zearuddin Howladar, petitioner, 19 S. W. R. Cr. R. 48.

A person was bound down under recognizances to keep the peace towards all Her Majesty's subjects for a period of one year. Some time afterwards he wrongfully confined, and extorted a sum of money from two ryots, who were supposed to have committed theft on his lands, he being for such offence fined and his recognizances forfeited. Held, that the matter ought to have ended with the fine. For the ryots not having offered any resistance no breach of the peace took place, and the amount of the recognizances could not be taken.

Reg. v. Isreepershad Singh, 20 S. W. R. Cr. R. 18; S. C. 9 B. L. R. App. 44.

Although a Magistrate may summon a person on credible information to show cause why he should not be bound over to keep the peace, he cannot, under section 491, Code of Criminal Procedure (Act X of 1872) bind over such person to keep the peace until he has adjudicated on evidence produced before him by the person accused. The notice to the accused should give him sufficient time to come in to produce his evidence.

Reg. v. Jhapoo & others, 20 S. W. R. Cr. R. 37.

On a conviction for criminal trespass under section 447, Penal Code, the Joint-Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in section 489, (Act X of 1872) for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint-Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.

Sahebdi v. Kuran & another, 21 S. W. R. Cr. R. 37.

No order requiring personal recognizance to keep the peace can be passed under Act X of 1872, section 489, unless the accused has been convicted of rioting or any other offence.

Kristo Prosad Mundle, petitioner, 22 S. W. R. Cr. R. 74.

The powers contained in sections 396 and 397 of the Code of Criminal Procedure extend not only to recognizances taken by a Magistrate for the appearance of an accused person by a surety under section 125, but also to such recognizances when taken by a police officer.

Lall Mahomed v. Gibbon, 22 S. W. R. Cr. R. 74.

The High Court reduced the amount of recognizances required in this case as it was very much in excess of, and out of proportion to the means of the party accused, section 493 of the Code of Criminal Procedure requiring that the Magistrate should look to the means of the party ordered to find sureties.

Reg. v. Hur Kurmari Dassia, 24 S. W. R. Cr. R. 10.

Act X of 1872, section 489 cannot be applied to cases where there is only a possible apprehension of future breach of the peace. If such breach appears to the Magistrate to be likely, he can apply to the officer having authority who can proceed under section 491.

Reg. v. Gossain Munraj Pooree.

Reg. v. Gossain Luchmee Narain Pooree & another, 24 S. W. R. Cr. R. 23.

In the absence of any evidence rendering a breach of the peace probable, a Magistate is not justified in calling upon parties to show cause why they should not enter into recognizances, and on their failure, to make an order under Act X of 1872, section 490.

Gossain Luchmun Pershad Pooree & others v. Pohoop Narain Pooree, 24 S. W. R. Cr. R. 30.

After summoning a person to show cause why he should not enter into a bond to keep the peace, the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace.

Huree Mohun Mullick v. Kalinath Roy, 25 S. W. R. Cr. R. 15.

A party cannot be called upon, under Act X of 1872, section 391 to enter into recognizances to keep the peace, unless the evidence points to some specific conduct or act on his part from which a reasonable or immediate inference can be drawn that he is likely to commit a breach of the peace.

Abdool Bari & others, petitioners, 25 S. W. R. Cr. R. 50.

Where information of a probable breach of the peace is first laid in general terms and is subsequently supported by evidence which is given in the presence of the prisoners who are particularly implicated by it, the case for a demand for recognizances may properly rest on the whole evidence taken in the case, but when a Magistrate calls upon persons to show cause why they should not be bound down in their own recognizances to keep the peace, he cannot go beyond the requisition, and on the adjudication of the matter order them to furnish other securities besides.

Reg. v. Kumodinikant Banerjee Chowdhry, 9 B. L. R. App. 30; S. C. 18 S. W. R. Cr. R. 44.

Under section 290 of the Criminal Procedure Code, (Act XXV of 1861) an order to execute a second recognizance during the time the first recognizance is in force is illegal.

Empress v. Nurul Huqq & another, 3 I. L. R. Calc. 757; S. C. 2 C. L. R. 408.

The High Court has no power to reduce the amount of recognizances which have been forfeited but in a case of hardship the matter should be referred to Government.

Empress v. Nobinchunder Dutt, 4 I. L. R. Calc. 865; S. C. 4 C. L. R. 243.

A Magistrate is not justified in forfeiting a recognizance under section 502 of Act X of 1872 unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses, upon whose evidence the rule to show cause why the recognizance should not be forfeited has been issued.

Ram Chunder Lalla in re, 1 C. L. R. 134.

When a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not nevertheless proceed to forfeit such recognizance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law.

Parbutti Churn Bose & another in re, 3 C. L. R. 406.

On the 20th of April 1877, A, was bound down to keep the peace for one year. On the 14th of January 1878, he was convicted of an offence and sentenced therefor to fine and imprisonment, but no order was made for the recovery of the penalty, though the Magistrate knew that the recognizance had been forfeited. On the 2nd of April 1878, the Magistrate at the instance of a third party, called upon A. to shew cause why the penalty of the recognizance should not be paid, and a warrant for its recovery was issued on the 6th of June 1878. Held, that the warrant must be quashed, on the ground, that the Magistrate having inflicted a sentence of fine and imprisonment with the knowledge that the recognizance was forfeited, he was not competent to inflict a further penalty on a re-consideration of the circumstances.

Naki Hazi in re, 8 C. L. R. 72.

Where the penalty under a recognizance bond has been forfeited, neither the Magistrate nor the High Court has power to reduce the amount of the penalty.

Nellikel Edatthil Itti Pungy Achen, 2 Mad. Rep. 240.

The report of a Subordinate Magistrate is such "creditable information," within the meaning of section 282 of the Code of Criminal Procedure (Act XXV of 1861) as to authorize a Magistrate to summon an individual in the report and require him to enter into a recognizance to keep the peace, although the report does not suggest that a recognizance should be required, but suggests other means for the prevention of disputes and the preservation of order.

Proceedings of 31st Oct. 1868, 4 Mad. Rep. Rul. 17.

A Subordinate Magistrate has no power under the provisions of the Criminal Procedure Code (Act XXV of 1861) to take recognizances from a complainant and witnesses to appear on a certain day before a Magistrate of co-ordinate jurisdiction and recognizances thus taken cannot be forfeited.

Proceedings of 31st Oct. 1868, 4 Mad. Rep. Rul 18.

A Subordinate Magistrate has no power to order a recognizance executed by a prosecutor before a Police Station officer, binding himself to appear before the Subordinate Magistrate, to be forfeited on the failure of the prosecutor to appear.

Proceedings of 9th April 1869. 4 Mad. Rep. Rul. 44.

Where a defendant charged with an offence bound himself to appear before a Sub-Magistrate on the 10th June and the defendant did appear on that day but made default on the 11th of June on which the case was called. Held, that there was no forfeiture of the recognizance. In such cases section 219 of the Code of Criminal Procedure (Act XXV of 1861) requires that the Magistrate shall form a reasonable opinion that there has been wilful default before issuing process to enforce the penalty.

Proceedings of 17th Nov. 1871. 6 Mad. Rep. Rul. 39.

Defendants were charged with theft, and on their appearance before the Subordinate Magistrate on 1st May, were bound over by recognizance to appear from that date until the close of the trial. On the 2nd May when the case was called on, defendants were not present, but they appeared on the 3rd. The Sub-Magistrate heard what they had to say and directed the penalties on the forfeited recognizances to be levied from the defendants. Held, that there was no ground for the interference of the High Court as a Court of Revision; that there was nothing illegal in requiring defendants to execute such a bond, and that no notice was necessary before proceeding to enforce the penalty.

Anonymous, 1 Bom. Rep. 138.

A Magistrate has not power to mitigate the penalty entered in a recognizance bond. Such bond must be enforced to its full amount, unless Government forego a portion of the penalty.

Reg. v. Bhaskar K. Kharkar, 3 Bom. Rep. Crown Cases, 1.

A conviction of house-trespass by a Subordinate Magistrate was reversed, on appeal, by the Magistrate of the District who, moreover, directed the Subordinate Magistrate to take a recognizance bond in the sum of Rs. 50 from the accused, that he would not, for one year, enter the house, and would not commit a breach of the peace: Held, by the High Court that the order directing the recognizance bond to be taken should be set aside, as having been improperly made by the Magistrate in the absence of the accused, and upon the suggestion of his adversary:

Semble, the order was also illegal, as not authorized by section 280, or any other section of the Code of Criminal Procedure.

Reg. v. Lallubhai Jassubhar, 5 Bom. Rep. Crown Cases, 64.

Held, that where the personal attendance of an accused is dispensed with, a recognizance bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear, either in person or by an agent; and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond.

Reg. v. Dalpatram Pemabhai, 5 Bom. Rep. Crown Cases, 105.

Order of District Magistrate, requiring certain persons to enter into recognizance and find security to keep the peace, reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by section 307 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Jivanji Lunji, 6 Bom. Rep. Crown Cases, 1.

A statement by a private person not upon oath or solemn affirmation is not credible information, upon which alone a Magistrate should issue a summons under section 282 of the Code of Criminal Procedure (Act XXV of 1861).

Semble:—A report by a subordinate Magistrate of facts within his knowledge would be credible information, upon which such summons might issue, but would not be sufficient ground for a final adjudication under section 288.

In order to warrant an adjudication under section 288, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded.

Harirام Birnnan in re, 11 Bom. Rep. 170.

A Magistrate has no jurisdiction to call on a person who has entered into a recognizance bond, under section 493 of the Code of Criminal Procedure (Act X of 1872) to pay the penalty or show cause why he should not do so, without previous *primâ facie* proof, by which is meant evidence on oath, that it has been forfeited. Section 502 of the Code of Criminal Procedure.

Reg. v. Mahomed Afzul & another, 7 S. W. R. Cr. R. 59.

A Magistrate ought not to direct a party to restore a road and canal to their former state, and to show cause why he should not enter into recognizances to keep the peace without hearing such party.

Nilmadhub Ghosal & others, petitioners; Judoonath Roy & others, petitioners, 19 S. W. R. Cr. R. 1.

A Magistrate should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound in a case under section 284 of the Code of Criminal Procedure (Act XXV of 1861). Under the provisions of section 293, a Magistrate cannot direct the forfeiture of a portion of the penalty. Where the amount of the recognizances were wholly out of proportion to the nature of the dispute, and to the means of the parties, the High Court held they could not interfere, but the Goverment might be moved in the matter.

Abasu Begum v. Umda Khanum & another, 8 I. L. R. Calc. 724.

The words of section 492 of the Code of Criminal Procedure (Act X of 1872) are directory, and not imperative; and an omission to insert in a summons under that section the amount of the recognizance and security required, will not invalidate any subsequent proceedings binding over the parties to keep the peace.

Reg. v. Moonee Doobey & others, 2 N. W. P. Rep. All. 189.

An order directing certain persons to enter into recognizances of Rs. 500 each, conditioned to keep the peace for the period of one year, without first summoning them to show cause why they should not be required so to do, is irregular, and will be quashed.

Proceedings of 18th March, 1868. 4 Mad. Rep. Rul. 6.

A Subordinate Magistrate cannot bind over witnesses by recognizances to appear before himself. The proper course to enforce attendance is by summons, and, if that fails, by warrant.

Moheshchundra Roy & another petitioners in re, 10 C. L. R. 571.

An order estreating a recognizance or a bail-bond must be made upon evidence duly recorded in the case and not upon evidence taken in other cases. Where a Magistrate makes an order forfeiting a recognizance under section 502 of the Criminal Procedure Code (Act X of 1872) the terms of the section must be strictly followed. It is not competent to direct that in default of payment, the person whose recognizance is forfeited should be imprisoned, without first issuing a warrant for the attachment and sale of their immoveable property.

Proceedings of 19th Oct. 1876. Weir, 361.

Recognizances for attendance before the Sessions Court are to be taken only from the witnesses present before the committing Magistrate.

RECORD.

Reg. v. Jumden Singh, 12 S. W. R. Cr. R. 73.

The power granted to the Civil Courts of calling for and inspecting the records of a previous trial, is one that ought to be exercised with the greatest caution, and does not extend to criminal proceedings.

Reg. v. Belash Mosulmany, 14 S. W. Cr. R. 46.

There ought to be only one Sessions record, which should be continuous, and should contain accurately and consecutively the whole of the proceedings in the trial, including the examination of the accused.

Reg. v. Rutton Meah, 8 S. W. R. Cr. R. 57.

Documents which form the basis of a charge against a prisoner should not be buried among a mass of papers in the nuthee, but should be put either in the calendar or by themselves in an envelope, or in some conspicuous part of the record where they would be seen at once.

Reg. v. Sheikh Bheekun, 8 S. W. R. Cr. R. 30.

The principal documents in a Sessions case should be put in a prominent place on the record, and not buried in a mass of papers.

The dying declaration of a deceased should form part of the Sessions record.

Reg. v. Soyumber Singh & others, 9 S. W. R. Cr. R. 2.

In a case of false evidence the record of the case in which the evidence was given should always be sent up.

Reg. v. Unnoo Patoonee, 3 S. W. R. Cr. R. 15.

A Sessions nuthee should contain the record of the defence set up by the prisoners in the Sessions Court. Points out how such record is to be made up with reference to sections 372, 373, and 374 of the Code of Criminal Procedure (Act XXV of 1861).

Gopal Hajjam, Case of, 15 S. W. R. Cr. R. 16.

The Magistrate's record of the proceedings prior to commitment should always be forwarded to the High Court.

Reg. v. Kasim Ali & others, 15 S. W. R. Cr. R. 67.

The signature of a Magistrate to a warrant of commitment under section 303 of the Code of Criminal Procedure, 1872, should not be affixed by stamp. In summary trials under the provisions of Chapter XVIII of the Code of Criminal Procedure, 1872, the record in non-appealable cases and the judgment in appealable cases must be written by the Magistrate. A Magistrate in such cases is not authorized to depute duty to a clerk, nor to affix his signature to the record or judgment by a stamp.

Subramanya Ayyar v. The Queen, 6 I. L. R. Mad. 396.

The High Court will not order a copy of the Judge's notes of the evidence and proceedings upon conviction in a criminal case to be furnished to the prisoner on the ground of alleged probable hardship. A *primâ facie* case as to the irregularity of those proceedings, or the illegality or impropriety of the sentence or order, must appear, before the Court will call for or direct a return of the record of the proceedings.

Reg. v. Subbayya Gaundan, 1 Mad. Rep. 138.

REFERENCE.

A prisoner in claiming the "right of reference to the Sudder Court" does not lose all right to the opinion of the Judge, and to appeal on the facts upon a trial by jury.

Reg. v. Chukkun, 3 S. W. R. Cr. R. 58.

A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of section 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate not authorised to receive complaints without reference from the District Magistrate, who tried and convicted the offender.

Iswar Chundra Koer v. Umesh Chundra Pal in re, 8 B. L. R. 19.

Held, per KEMP, J. that compliance with the provisions of section 66 of Act XXV of 1861 made the subsequent proceedings void.

Held, per AINSLIE, J. that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under section 66 B. of Act VIII of 1869 and that the subsequent proceedings therefore were valid.

Reg. v. Shobrattee Sheikh, 6 S. W. R. Cr. R. 2.

A reference to proceedings in a former case declared to be irregular.

Sreekissen v. Juglal & others, 9 S. W. R. Cr. R. 5.

A Sessions Judge ought not to refer to the High Court, under section 434 of the Code of Criminal Procedure (Act XXV of 1861) the case of a prisoner, who has appealed to him, but should decide it himself.

Nidree Telhinee, Case of, 11 S. W. R. Cr. R. 7.

Held, that a Subordinate Magistrate acted correctly under section 277 of the Code of Criminal Procedure (Act XXV of 1861) in referring a case, not to the Magistrate of the district, but to the Assistant Magistrate in charge of the sub-division to which he was attached.

Ramdhun Mundle & others, 18 S. W. R. Cr. R. 39.

The taking by the Sessions Judge of a different view of the evidence from that taken by the Magistrate is not ground for a reference under section 434, Criminal Procedure Code (Act XXV of 1861).

Reg. v. Jaffir Ali & others, 19 S. W. R. Cr. R. 57.

Where a case is referred to the High Court under section 287, Act X of 1872, the Court is bound, under section 288 of the same Act, to go into the case, although the conviction was by the verdict of a jury.

Sobil Dass v. Chunder Deb & others, 20 S. W. R. Cr. R. 15.

The High Court refused to interfere on a reference made to it by a Deputy Commissioner in a case which was sent up for heavier punishment to the Deputy Commissioner under section 46, Code of Criminal Procedure (Act X of 1872) by a Magistrate of the second class; as the Court was of opinion that the Deputy Commissioner instead of referring the case, ought under that section to have tried the prisoners himself, and convicted them of any offence which he thought was made out against them by the evidence.

Reg. v. Ramchurn Ghose, 20 S. W. R. Cr. R. 33.

In a case referred to the High Court under section 263 of the Code of Criminal Procedure (Act X of 1872) because the Sessions Judge differed from the verdict of the jury, the High Court held that it was for the Government, the appellants, who asked for a conviction, to begin and satisfy the Court that there was a case calling upon the prisoner for an answer.

Nibarun Chunder Dass v. Bhuggobutty Churn Chatterjee, 20 S. W. R. Cr. R. 40.

A Magistrate should, under section 296, Code of Criminal Procedure (Act X of 1872) exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error. Letter No. 480, dated 19th May 1865 (3 S. W. R. criminal letters, p. 5) explained.

Rajkisto Paul v. Nittyanund Paul, 20 S. W. R. Cr. R. 50.

Where a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the proceedings to the High Court in the manner prescribed by the Circular Order of 15th July 1863, which is applicable to references under section 296 of the present Code of Criminal Procedure (Act X of 1872).

Empress v. Ramlall, 8 I. L. R. Calc. 875.

A District Magistrate being of opinion that the Sessions Judge had, on appeal, improperly set aside a conviction made by a Cantonment Magistrate, referred the matter to the High Court under section 297 of the Code of Criminal Procedure (Act X of 1872). Held, that the Magistrate had no power to make such a reference.

David, petitioner in re, 6 C. L. R. 245.

One of two prisoners, who were tried jointly before a Bench of Magistrates on the complaint of the District Magistrate, appealed to the Sessions Judge, and was acquitted. The District Magistrate thereupon, under sections 296 and 297 of the Criminal Procedure Code, (Act X of 1872) transmitted the proceedings in the case to the High Court, and asked that they might be quashed on the ground that there had been been a failure of justice. Held, that the Magistrate was not competent to refer the proceedings of a superior Court to the High Court.

Dula Faqueer v. Bhagirat Sircar & others, 6 C. L. R. 276.

It is not competent for a Magistrate, to whom a case has been referred under section 46 of the Code of Criminal Procedure, (Act X of 1872) to return the case to the referring Magistrate on the ground that in his opinion the latter has power to pass an adequate sentence. All orders passed after a case has been so returned, are illegal.

Empress v. Bhup Singh, 2 I. L. R. All. 771.

A Court of Session, after it had asked the assessors their opinion in a case which was being tried by it, suspended the trial of the case and made a reference to the High Court under section 226 of Act X of 1872, on a question of jurisdiction which had arisen in the trial of the case. Held, that it was not intended that that section should be so used, and the Court of Session must dispose of such question itself.

Reg. v. Bhikaree Nawab Abdoolla & Mussamat Budho, 4 N. W. P. Rep. All. 88.

The Magistrate of the District, on a complaint being presented to him, has no power to refer the petition to a Subordinate Magistrate for trial until he has himself reduced the examination of the petitioner into writing, in accordance with the provisions of section 66 of the Criminal Procedure Code (Act XXV of 1861).

Proceedings of 23rd March 1869. 4 Mad. Rep. Rul. 40.

Under section 273 of the Code of Criminal Procedure (Act XXV of 1861) a full power Magistrate may refer for enquiry to a Subordinate Magistrate criminal cases, that is, *primâ facie* any criminal case. The reference may be for enquiry or for trial by the Sub-Magistrate or with a view to commitment either to a Court of Session or the High Court.

Proceedings of 8th Nov. 1870. 5 Mad. Rep. Rul. 43.

Where a case was referred by a second-class Subordinate Magistrate to the Divisional officer, under section 277 of the Code of Criminal Procedure (Act XXV of 1861) the High Court were of opinion that the Divisional officer was bound to form his own judgment and pass sentence on the case.

Proceedings of 23rd April 1872, 7 Mad. Rep. Rul. 5.

Section 23 G. of the Code of Criminal Procedure (Act VIII of 1869) makes the Magistrate of a District competent to refer cases under section 273 of the Code to a Divisional Magistrate exercising full powers.

Proceedings of 15th June, 1874. 7 Mad. Rep. Rul. 33.

Section 44 of the Code of Criminal Procedure (Act X of 1872) confers no authority on one Subordinate Magistrate to refer to another Subordinate Magistrate a case referred to him for disposal.

Reg. v. Dipchand Khushal, 4 Bom. Rep. Crown Cases, 30.

Held, that the Magistrate of a district to whom a case has been sent for investigation by a Civil Court has no power to refer it to a Magistrate F. P. and the latter has, therefore, *under such circumstances*, no jurisdiction to take up the case without complaint made to him.

Reg. v. Vishvanath Daulatrav, 4 Bom. Rep. Crown Cases, 33.

The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a Magistrate F. P. who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate F. P. had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court.

Reg. v. Bagu valad Owsari et al., 4 Bom. Rep. Crown Cases, 34.

A Subordinate Magistrate has no power to refer a case, which he has not himself jurisdiction to try, to a Magistrate F. P., and the latter has, therefore. *under such circumstances*, no jurisdiction to take up the case without a complaint being made to him.

Reg. v. Bhagu bin Shabaji, 5 Bom. Rep. Crown Cases, 47.

Held, that a Magistrate F. P., though empowered to hear appeals is not thereby placed in the position of the Magistrate of the district, and that, therefore, Subordinate Magistrates should not refer cases, under sectior 276 of the Code of Criminal Procedure (Act XXV

1861) to such Magistrate, but to the Magistrate of the district to whom alone they are subordinate.

Reg. v. Chanveraya bin Chanbasaya, 5 Bom. Rep. Crown Cases, 65.

Where, on appeal from a conviction by a Subordinate Magistrate, the Magistrate of the district is of opinion that the offence which the evidence brings home to the prisoner is not triable by a Magistrate, and that an illegality has been committed, he should refer the matter for the orders of the High Court, under section 434 of the Criminal Procedure Code (Act XXV of 1861); such Magistrate cannot himself, under section 427 annul the conviction, and direct the committal of the prisoner to the Court of Session, upon the proper charge.

Reg. v. Krishna Parashram et al. 5 Bom. Rep. Crown Cases, 68.

Held, that the Magistrate of a district before whom a criminal case is brought, either on complaint preferred directly to such Magistrate, or on the report of a police officer, cannot under section 273 of the Criminal Procedure Code, (Act XXV of 1861) refer such case to a Magistrate F. P.

A Magistrate F. P. though executively inferior to the Magistrate of the district, is not a "Subordinate Magistrate" within the meaning of Chapter XVI of the Criminal Procedure Code, nor is he "immediately subordinate" to the district Magistrate, within the meaning of section 434 of the same Code.

Reg. v. Amruta Nathu, 7 Bom. Rep. Crown Cases, 29.

A Subordinate Judge finding that a person had made a false verification of a plaint, sent his case for investigation to a Magistrate of the district, who refused to investigate it, on the ground that the alleged offence was one triable exclusively by the Court of Session, to which the Subordinate Judge himself should, under section 173 of the Code of Criminal Procedure, (Act XXV of 1861) have committed it. Held, that the Magistrate of the district was bound to proceed with the investigation of the case according to section 16 of Act XXIII of 1861.

Reg. v. Mangla Bhulia et al. 7 Bom. Rep. Crown Cases, 69.

It is competent for the Magistrate of a district, to refer for trial to a Full Power Magistrate, a case submitted under section 276 of the Code of Criminal Procedure, to such Magistrate of the district by a Subordinate Magistrate.

Reg. v. Kala bin Hari Gama et al. 7 Bom. Rep. Crown Cases, 72.

Where a Magistrate of the district thinks that in any case tried by a Magistrate subordinate to him, a failure of justice has occurred in consequence of the latter not committing the accused for trial to the Court of Session, he should refer the case, with an expression of his opinion, to the Session Court, which has power, under section 435 of the Code of Criminal Procedure (Act XXV of 1861) to direct a commitment to the Session Court for trial. Section 435 having been altered by Act VIII of 1869, it is no longer necessary to refer such cases to the High Court, as required by the Courts ruling in Reg. *v.* Chanviráyá bin Chanbasáyá, (5 Bom. Rep. Crown Cases, 65).

Reg. v. Papidio Mutholo, 9 Bom. Rep. 67.

A Full-Power Magistrate has no authority to refer for disposal to a Subordinate Magistrate a complaint made originally to such Full-Power Magistrate.

Velayudam, accused. Weir, 241.

The ruling in High Court Proceedings dated 8 November 1880, followed. See V. M. H. C. Rep. App. 43.

Proceedings of 15th July, 1878. Weir, 243.

Where a Subordinate Magistrate, having found certain persons guilty of an offence, submitted the proceedings to a Superior Magistrate for more severe punishment, and his proceedings were returned to him as defective, it was held, having regard to section 464 of the Code, that it was open to the Subordinate Magistrate to come to a fresh and different finding as to the guilt of the accused.

Proceedings of 27th Oct. 1880. Weir, 315.

A District Magistrate should refer to the High Court all cases in which he considers the orders of a Subordinate Court illegal. It is for the High Court to determine whether or not the illegality requires correction.

REMAND.

Anonymous case, 3 B. L. R. Ap. Cr. 62.

A remand of a case under section 422, Act VIII of 1869, can only be for the purpose of taking further evidence and certifying the result thereof to the Appellate Court, and not for the purpose of retrying the case upon such fresh evidence.

After remand under this section, the Appellate Court can only try the case as an ordinary appeal, and has no power to enhance the punishment.

Zuhuruddeen Hossein, petitioner, 25 S. W. R. Cr. R. 8.

A Magistrate is not at liberty to retain an accused person in custody, except upon a proper remand made after taking sufficient evidence given on oath or solemn affirmation.

Udai Chand Mukhopadhya in re, 9 B. L. R. App. 31.

Where a person had been found guilty by a Magistrate of the offence of intentionally omitting to give information of an offence which he was bound to give, and on appeal the Judge found that there had been no evidence given of the omission, held, *per* KEMP, J. (GLOVER, J. *contra*) the Judge could not remand the case for additional enquiry under section 422 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Surkya valad Dhaku, 5 Bom. Rep. Crown Cases, 31.

Held, that the order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal. At the expiration of 24 hours from the time of arrest, the accused must be brought before a Magistrate, who can then remand for a period not exceeding fifteen days, under section 224 of the Criminal Procedure Code (Act XXV of 1861). No remand without a hearing can last for a longer period.

Proceedings of 10th June, 1867. Weir, 277.

A remand cannot be granted in the absence of the prisoner. The meaning of a remand is that a prisoner is brought up and re-committed to custody.

RETRIAL.

Reg. v. Madaree Chowkeedar, 3 S. W. R. Cr. R. 4.

The Sessions Judge on appeal, without trying the merits of the case, reversed the Magistrate's conviction in a case of theft upon a point of law, reading the Penal Code by the light of his knowledge of the English law. The High Court reversed the Sessions Judge's reversal of the Magistrate's conviction, upon the ground that his decision was wrong in point of law, and directed him to re-apprehend the accused and re-hear the appeal on the merits.

The Sessions Judge thought that the High Court had no power to order the re-apprehension of the accused, and, proceeding to re-hear the appeal in the absence of the accused, acquitted him. Held, that the retrial in the absence of the accused was a nullity; that if the accused had been convicted instead of being acquitted, the case must have been re-tried; but that as the Sessions Judge had declared his opinion that the evidence did not make out a case of guilt, it would be merely vexatious to the accused to insist upon the Sessions Judge obeying the order of the Court, and re-trying the case in the presence of the accused. The High Court had full power to make the order, and the disobedience of the Sessions Judge, and the course he thought fit to adopt were highly censurable.

Reg. v. Muthoora Singh, 18 S. W. R. Cr. R. 66.

Where there is a failure of justice, or where the prisoner has been prejudiced by the defective summing-up of the Judge, the High Court can interfere either by discharging the prisoner if the evidence on the record is not sufficient to convict him, supposing the trial to have taken place with the aid of assessors, or to direct a fresh trial.

Luckhy Narain Nagory, petitioner, 24 S. W. R. Cr. R. 24.

The High Court has full power as a Court of Revision to order a retrial when necessary. As a Court of Appeal, it has the like power under Act XI of 1874, section 28 in cases tried with assessors.

Huriprosad Dutta in re, 25 S. W. R. Cr. R. 61.

Where a re-trial had been ordered by the High Court on the ground that the evidence of an important witness had not been taken, and the Court of first instance, after recording the evidence of that witness, refused to reconsider all the old evidence except in so far as it was affected by the deposition of the fresh witness, but the Lower Appellate Court had fully reconsidered all the evidence, old and new, and adhered to its former decision, adding that, from its official knowlege of the fresh witness, it did not consider his evidence trustworthy. Held, by the High Court, that whatever view it might have taken of the decision on an appeal on all the facts, it could not set aside the decision on the ground that any material error had occurred in a judicial proceeding.

Joja Pashan, petitioner in re, 3 C. L. R. 131.

A man accused of theft was acquitted by the Deputy Magistrate under section 220 of the Code of Criminal Procedure, (Act X of 1872). The District Magistrate, at the instance of the police, ordered the case to be re-tried. It appeared that the Deputy Magistrate had not framed any charge, but that no failure of justice had been occasioned by his not doing so. Held, that the Magistrate had no power to order a re-trial, without first setting aside the order of acquittal; and that he had no power to set aside the order of acquittal as the case had not been appealed to him.

Empress v. Karan Singh, 1 I. L. R. All. 680.

K. was tried by a Magistrate in a summary way and convicted. He appealed to the Court of Session, which quashed his conviction on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment. *Held,* that the Court of Session should not have quashed the conviction merely by reason of such defect, but, if it found it impossible to dispose of the appeal because of such defect, it should have required the Magistrate to repair the same by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a retrial with that view.

Rami Reddi & Seshu Reddi in re, 3 I. L. R. Mad. 48.

When a Session Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a re-trial at the time under section 284 of the Criminal Procedure Code (Act X of 1872), he is not precluded, by virtue of section 464, from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal.

Tarada Baladu v. The Queen, 3 I. L. R. Mad. 112.

The power given by the Criminal Procedure Code (Act X of 1872) to a Magistrate to pronounce a judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge.

Reg. v. Subhana bin Ganu, 9 Bom Rep. 169.

Where a Sub-Magistrate discharges a person accused of an offence not being an offence specified in the seventh column of the schedule to the Criminal Procedure Code (Act XXV of 1861) as triable by the Court of Session only, or by the Court of Session or Magistrate of the

district, the district Magistrate has no power to direct a retrial under the provisions of section 435 of the Code of Criminal Procedure.

RESISTANCE TO EXECUTION.

Reg. v. Rhagai Duffadur, 2 B. L. R. F. B. 21.

The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure (Act XXV of 1861) by a Court of criminal jurisdiction.

Ameen, The v. Bhagai Duffadur & another, 10 S. W. R. Cr. R. 43.

The resistance of process of a Civil Court is punishable under the Code of Criminal Procedure (Act XXV of 1861). Previous ruling of Chunder Kant Chuckerbutty, (9 S. W. R. Cr. R. 63) overruled.

REVIEW AND REVISION.

Reg. v. Bindu & others, 8 S. W. R. Cr. R. 60.

Section 434 of the Code of Criminal Procedure (Act XXV of 1861) contemplates cases where the sentence or order is contrary to law.

Reg. v. Godai Raout, 5 S. W. R. Cr. R. 61; B. L. R. Sup. Vol. 436 F. B.

The High Court cannot entertain an application to review a judgment passed by it on appeal in a criminal case. No subordinate Criminal Court has the power to review its own judgment.

Reg. v. Gorachand Gopee, & others, 5 S. W. R. Cr R. 45; B. L. R. Sup. Vol. 443; 1 Ind. Jur. N S. 177 F. B.

Several important distinctions pointed out between murder and culpable homicide. Sections 407 and 419 of the Code of Criminal Procedure (Act XXV of 1861) are not applicable to a case which the High Court as a Court of Revision thinks it right to take up. An appeal is a matter of right in all cases in which an appeal is given, but a revision is in the discretion of the Court. An appeal is for matter of fact, as well as for matter of law. A revision is only on matter of law.

The High Court as a Court of Revision can interfere with a judgment of acquittal or conviction, and can also enhance punishment. The High Court can act as a Court of Revision after it has acted as a Court of appeal, in order to correct an error in law which could not be set right on appeal. The High Court, as a Court of Revision, cannot reverse the finding of a jury.

When several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others are not involved in

the guilt, unless the act done was in some manner in furtherance of the common intention.

Reg. v. Joykissenlall 12 S. W. R. Cr. R. 46.

The High Court can only interfere under section 434, Code of Criminal Procedure (Act XXV of 1861) when there is some illegality in the proceedings of a Lower Court.

Reg. v. Brae, 3 S. W. R. Cr. R. 64.

Held by MORGAN and SETON-KARR, JJ.: that the High Court, as a Court of Revision under section 404, Criminal Procedure Code (Act XXV of 1861) has no jurisdiction over European British subjects in criminal cases.

Reg. v. Solim, 5 S. W. R. Cr. R. 41.

In a referred case, and not an appeal, if the High Court considers a conviction wrong, the only course open to it is to annul the conviction and order a new trial for the proper offence.

Reg. v. Sobeel Mahee, 5 S. W. R. Cr. R. 32.

The failure of the Judge and assessors to convict a prisoner on the graver charge, a charge which was amply supported by the evidence, is not an error of law with which the High Court can interfere under its revising powers.

Reg. v. Dhoonda Bhooia, 8 S. W. R. Cr. R. 46.

Where a Magistrate committed to the Court of Sessions for an offence cognizable by himself, but which by the 3rd explanatory note prefixed to the schedule annexed to the Code of Criminal Procedure (Act XXV of 1861) the Court of Sessions was competent to try, and it appeared convenient that it should try the accused and pass sentence on the accused; the High Court declined to interfere.

Nirba Sing v. Tofuzzul Hossein, 8 S. W. R. Cr. R. 57.

The High Court will not interfere upon a mere statement of a prisoner, unsupported by any evidence whatever, that the Magistrate who convicted him did not record the whole of the defence he wished to make.

Tukheya Rai v. Tupsee Koer, 15 S. W. R. Cr. R. 23.

Following the Queen *v.* Gorachand Gope, the Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried, not on evidence taken before himself in the case, but entirely on evidence in another case before another officer (the Joint-Magistrate). The complainant's pleader was at liberty before the Deputy Magistrate to cross-examine the witnesses for the defence on points respecting which they had made statements before the Joint-Magistrate, and he might do so as regards previous statements which were reduced to writing, without showing the writing. Section 34, Act II of 1855 explained. See now section 145 of the Evidence Act (I of 1872).

Sheikh Hazari v. Chundi Churn Chuckerbutty, 16 S. W. Cr. R. 62.

Application for revision by the High Court of an order passed in appeal by a Sessions Judge must be by motion.

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Krishno Churn & Moheram of Assam, 17 S. W. R. Cr. R. 2.

The Court has no power to review its judgment in criminal cases as ruled in Full Bench judgment, 5 S. W. R. Cr. R. p. 61.

Azeemoddy & others in re, 17 S. W. R. Cr. R. 52.

Section 426 of the Code of Criminal Procedure (Act XXV of 1861) allows no revision by the High Court in cases where, in the judgment of the Appellate Court, an accused person has not been prejudiced by an error or defect in the proceeding before the Magistrate (*e. g.*, as in this case, by the alteration of the charge and the omission of the Magistrate to record a separate defence).

Debi Churn Biswas & others, petitioners, 20 S. W. R. Cr. R. 40.

The question which the High Court has to determine under sections 294 and 297, Code of Criminal Procedure (Act X of 1872) are questions of law or procedure which affect the decision, and not questions of fact depending upon conflicting evidence which has been considered by the Judge, and upon which he has given his opinion adversely to the accused person.

Mohesh Chunder & others in re, 20 S. W R. Cr. R. 55.

In exercise of its powers as a Court of Revision, the High Court quashed conviction by a Joint-Magistrate and Assistant Magistrate of certain persons for offences under section 283 (danger, obstruction, or injury to any person in a public way or line of navigation) and section 291 (repeating or continuing public nuisance) of the Penal Code, in which it appeared that the complainant's statement was not made on oath or before a Magistrate, and in which there was no statement of charge or evidence of any kind. Before a conviction can be had of committing a public nuisance under section 291 there must be proof that there was a previous conviction of an offence and an injunction by a public servant to desist from continuing such nuisance.

Nundo Kishore Haldar v. Anundo Chunder Chatterjee & others, 23 S. W. R. Cr. R. 64.

The difference of opinion on a question of proof between a Magistrate who did, and another who did not, hear the witnesses, is not a ground on which the High Court will be disposed to exercise its powers of revision.

Ramjoy Kurmokar, petitioner, 25 S. W. R. Cr. R. 10.

Sitting as a Court of Revision, the High Court cannot enter into any question as to whether, on the evidence before it, the Lower Courts have come to a right conclusion as to the facts; but, if there is absolutely no evidence, the conviction may be set aside as based on a material error in law.

Belilios in re, 12 B. L. R. 249.

Where the High Court sent for the record of a case, and it appeared therefrom doubtful whether the evidence was sufficient to support the conviction, the Court refused to interfere, there being no material error in law, or in the proceedings, which rendered such conviction illegal and improper.

Per GLOVER, J. :—The power of the High Court under section 294 of Act X of 1872 is limited to sentences and orders passed by subordinate Courts as distinct from judgments of such Courts, and a judgment cannot be interfered with (except in cases where the law gives an appeal on the facts) unless it be shown that it is contrary to law.

Per PONTIFEX, J. :—The High Court cannot, under section 294 of Act X of 1872, interfere with a conviction, unless there has been some material error of law which renders such conviction illegal and improper in law.

Semble :—Communications between a prosecutor in a criminal case and his attorney and his clerk, as to the case, are not privileged.

Reg. v. Ram Kanu, 12 B. L. R. 253 note.

The Deputy Magistrate had dismissed a complaint brought by the prisoner without examining certain witnesses called by him, and had ordered him to be prosecuted under section 211 of the Penal Code. Under this order the prisoner was tried; and sentenced to one month's rigorous imprisonment. The Sessions Judge, being of opinion that the Deputy Magistrate acted illegally in ordering a prosecution, referred the case to the High Court. He stated his opinion, however, that the complaint was a false one; that the prisoner did not distinctly state what the witnesses, who were not called, were expected by him to prove, and that those who were examined gave no reliable evidence in support of the prisoner's complaint; and some of them directly contradicted him.

PHEAR, J. :—Although, as the Judge points out, there has been error in the proceedings, still it does not seem to be a material error within the meaning of section 227 of the new Criminal Procedure Code, (Act X of 1872) as would justify our setting aside the proceedings on the trial and the conviction. For that purpose the error must be material; and we think that "material" in section 297 is equivalent to the effect of section 283 which says that :—"No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before the trial, or on account of the improper admission or rejection of any evidence, or by any misdirection in any charge to a jury, unless such error or defect has occasioned a failure of justice."

Here according to the view which the referring Judge himself takes, there has been no failure of justice, in as much as it would appear that the charge which the prisoner originally made was in reality a false charge, and therefore the prisoner has been rightly convicted. We, therefore, do not think it necessary to interfere with the conviction or sentence.

Municipal Committee of Dacca v. Hingoo Raj, 8 I. L. R. Calc. 895.

The High Court, as a Court of Revision, will not interfere with an order of acquittal.

Reg. v. Gholam Ismail, 1 I. L. R. All. 1.

An appeal having been preferred to the High Court against a judgment of acquittal of the Court of Session, the persons who had been acquitted were arrested by the police and brought before the Magistrate, who illegally directed

that they should be detained in custody pending the decision of the appeal.

TURNER, Offg. C. J. and PEARSON, J. were of opinion that the High Court had no power, as a Court of Revision, to interfere with the order.

SPANKIE and OLDFIELD, JJ. *contra.*

Empress v. Murli, 2 I. L. R. All. 336.

Held, that great laxity in weighing and testing evidence is a material error in a judicial proceeding, within the meaning of section 297 of Act X of 1872.

Reg. v. Tiloke Chund & another, 3 N. W. P. Rep. All. 273.

There is no provision in the Code of Criminal Procedure (Act XXV of 1861) for a review of judgment.

Aurokiam in re, 2 I. L. R. Mad. 38.

In the course of a serious riot one S. was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge believing the statement of the prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision, Held, 1st, that under the provisions of section 297 of the Criminal Procedure Code (Act X of 1872) the High Court may exercise its powers of revision upon information in whatever way received; 2nd, that it was not intended by the legislature that the powers given by clause I of section 297 should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error; 3rd, that it is not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Session Judge has not been brought before him; 4th, that the words "material error" in that section cannot be held to include error in the appreciation of evidence; 5th, that under the 1st clause of section 297, the High Court cannot set aside findings of fact except in case of an appeal from a conviction.

Imperatrix v. Pitamber Jina, 2 I. L. R. Bom. 61.

The High Court, on a point of law, as to the admissibility of rejected evidence, reserved under clause 25 of the Letters Patent, 1865 and section 101 of the High Court's Criminal Procedure Act (X of 1875) has power to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial (Indian Evidence Act, section 167).

Proceedings of 26th Aug., 1869. 4 Mad. Rep. Rul. 70.

The High Court as a Court of Revision has jurisdiction to set aside a finding of acquittal by a Session Court by virtue of section 405 of the Code of Criminal Procedure (Act XXV of 1861).

Proceedings of 29th Nov., 1869. 5 Mad. Rep. Rul. 10.

When there is evidence to be considered and weighed by the Court which is called upon to determine whether a person charged with an offence or offences is guilty or not guilty, an error as to the probative force and effect of the evidence is one of fact, and not open to correction except on appeal in the case of a conviction. Where the prisoners were charged with culpable homicide amounting to murder and culpable homicide not amounting to murder, and the Session Court convicted them of the latter offence, and the High Court were of opinion that the evidence established the charge of culpable homicide amounting to murder. Held, that the High Court had not the power as a Court of Revision under section 405 of the Code of Criminal Procedure (Act XXV of 1861) to order a new trial.

Reg. v. Mehtarji Gopalji et al., 7 Bom. Rep. Crown Cases, 67.

The Code of Criminal Procedure (Act XXV of 1861) contains no provision for a review of an order passed in a criminal case.

Reg. v. Sakharam Manohar, 11 Bom. Rep. 125.

The expression "material error" in section 297 of the Code of Criminal Procedure (Act X of 1872) does not include error in appreciating evidence, and the High Court, which, as a Court of Revision, is as much bound as a Court of Appeal by the provisions of section 283 of the Code extended by section 300, will not be justified in rectifying an error merely in the appreciation of evidence, nor, even an error in law, unless it be shown to the Court that such error has caused a failure of justice.

Dianut Hosein in re, 10 C. L. R. 14.

A Collector as such not being subject to the revisional jurisdiction of the High Court in criminal matters, that Court, in the exercise of such jurisdiction, is not competent to deal with an alleged illegal order made under the Indian Penal Code by a Collector.

Subba Tevan & another, accused. Weir, 324.

The High Court will not interfere as a Court of Revision in cases in which Government may appeal under section 272, Criminal Procedure Code.

T. Venkatachalam, petitioner. Weir, 325.

Where the High Court has dealt with a case as a Court of Appeal, it will not afterwards deal with the same case as a Court of Revision except possibly to cure a very manifest injustice.

A review of an order of the High Court in a criminal proceeding is not allowed by the Code.

Strinivasa Aiyangar, petitioner. Weir, 325.

Notwithstanding the rule of Court that cases coming before the High Court on revision shall be heard by a Bench of two Judges, it is not illegal for a single Judge to dispose of such cases when legally appointed a Bench for the disposal of the work of the Court.

Proceedings of 13th Nov. 1873. Weir, 387.

A judgment or final order pronounced and signed in accordance with the requirements of section 464 of the Code of Criminal Procedure (X of 1872) cannot be altered or renewed by the Court which gives such judgment or order. If the Court after pronouncing and signing the judgment should discover any error of law in the proceedings, the proper course is to apply to the High Court under section 296 of the Code of Criminal Procedure.

Proceedings of 28th Aug. 1879. Weir, 338.

A conviction on a trial regularly held will not be set aside merely because the Magistrate has been unavoidably prevented from recording a judgment in accordance with the requirements of section 464. In such circumstances, the right of appeal is not taken away by the absence of a complete judgment.

Rongai & others v. The Empress, 9 I. L. R. Calc. 513.

On the 9th of December 1882, a person was convicted under sections 457 and 109 of the Indian Penal Code, and sentenced to three years' rigorous imprisonment by a Deputy Magistrate of Assam exercising special powers under section 36 of the old Code of Criminal Procedure, Act X of 1872. The new Code of Criminal Procedure came into force on the 1st of January 1883. The prisoner presented an appeal to the High Court from the conviction and sentence abovementioned on the 23rd of January 1883.

Held, by FIELD, J. (MITTER, J. expressing no decided opinion) that the case was governed by section 408 of the new Code of Criminal Procedure, and that no appeal lay to the High Court.

Held, by the Court, that the case was a fit one for the exercise of the High Court's Revisional Jurisdiction, and should be dealt with under the powers conferred on the High Court by virtue of that jurisdiction.

Nobin Krishna Mookerjee v. Rassick Lall Laha, 10 I. L. R. Calc. 1047.

Under section 435 of the Criminal Procedure Code (Act X of 1882) the High Court has power to go into questions of fact, but it will only exercise this power in cases in which it finds that it will be in the interests of justice to do so.

REVIVAL OF CASE.

Hari Singh v. Danish Mahomed & others, 20 S. W. R. Cr. R. 46.

A Magistrate of a district has power to order a Subordinate Magistrate to revive a case in which the accused had been discharged.

Reg. v. Zuhoorul Huq & others, 25 S. W. R. Cr. R. 64.

Where a Deputy Magistrate, under section 210, Criminal Procedure Code (Act X of 1872), permitted a complainant to withdraw a complaint which was not considered heinous, and discharged the accused, and the District Magistrate revived the case against the accused

at the instance of the Commissioner. Held, that the Magistrate had no jurisdiction to act as he did.

Mohesh Mistree & another in re, 1 I. L. R. Calc. 282.

An order of a District Magistrate, directing the revival of certain criminal proceedings against the petitioners who had been discharged under section 215 of the Criminal Procedure Code (Act X of 1872) by a Subordinate Magistrate after evidence had been gone into, quashed as illegal and *ultra vires*.

As the case was one of improper discharge, and came before the Magistrate under section 295 of the Criminal Procedure Code, the proper and only course for him was to report it for orders, to the High Court, which, if of opinion that the accused were improperly discharged, might, under section 297, have directed a retrial.

The case Sidya bin Satya differed from.

Empress v. Donnelly, 2 I. L. R. Calc. 405.

It is illegal and *ultra vires* on the part of a Magistrate to revive before himself criminal proceedings against an accused who has already been discharged under section 215 of the Criminal Procedure Code (Act X of 1872) where no further evidence is procurable than that which was before the Court on the first occasion. *Per* MARKBY, J. :—When the discharge has been improper, the only proper course open to a Magistrate is to report the case to the High Court for orders, and that Court, if of opinion that the accused has been improperly discharged, will order a retrial.

Empress v. Hary Doyal Karmokar, 4 I. L. R. Calc. 16; S. C. 3 C. L. R. 263.

A Deputy Magistrate having dismissed a case instituted under section 380 of the Penal Code without taking certain evidence which, in his opinion, would have been of little value, the Magistrate of the District, on the application of the complainant, took such evidence, and committed the accused for trial before the Sessions Court.

Held, on reference to the High Court, that as the words "Sessions case" in section 296 of the Criminal Procedure Code (Act X of 1872) have reference only to a case triable exclusively by a Court of Session, the Magistrate's action could not be supported under that section, but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in Empress *v.* Donnelly, (I. L. R. 2 Calc. 405).

Empress v. Chunder Nath Dutt, 5 I. L. R. Calc. 121; S. C. 4 C. L. R. 305.

A "revival of a prosecution" as mentioned in Explanation 2 of section 87 of Act IV of 1877 (Presidency Magistrate's Act) is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo*.

Bradley v. Jameson, 8 I. L. R. Calc. 580.

On the 7th of June 1881 the Assistant Commissioner of Hylakandi in Sylhet, passed an order under section 518 of the Criminal Procedure Code (Act X of 1872), that the manager of a certain tea garden should discontinue holding a market on Thursdays until further notice. On the 25th of August 1881 the Assistant Commissioner reviewed this order, and having come to the conclusion that he had no power to issue a permanent injunction, struck the case off the file, at the same time referring the matter to the Deputy Commissioner. The latter declined to interfere, informing the Assistant Commissioner that he saw no illegality in his order. Thereupon the Assistant Commissioner passed an order declaring that his order of the 7th of June 1881 remained in full force. On a reference to the High Court, made by the officiating Session Judge of Sylhet under section 297 of the Code of Criminal Procedure, Held, that the Magistrate having on the 25th of August 1881, set aside his order of the 7th of June 1881 and struck the case off the file, he had no power to revive it without a fresh proceeding. Held, also, that the Magistrate had no power to pass a perpetual injunction under section 518 of the Code of Criminal Procedure. Gopi Mohun Mullick *v.* Taramoni Chowdhrani (I. L. R. 5 Calc. 7) followed. Held, also, that orders made under section 518 of the Code of Criminal Procedure not being orders made in a judicial proceeding, the High Court had no power to deal with them under section 297 of the Code of Criminal Procedure; but the order of the 6th of September 1881, being illegal, the High Court would set it aside under section 15 of the Charter Act 24 and 25 Vict. c. 104 in re Chunder Nath Sen (I. L. R. 2 Calc. 293) followed.

Ishenchunder Kurmokar v. Hurry Doyal Kurmokar, 3 C. L. R. 263.

Where the Deputy Magistrate discharges an accused person without having examined the principal witness in the case, his order is bad, and the District Magistrate is competent to revive the proceedings. Empress *v.* Donelly, I. L. R. 2 Calc. 405 cited and followed.

Empress v. Tika Singh, 3 I. L. R. All. 251.

A person was prosecuted before a Criminal Court in the Punjab for enticing away a married woman, with a criminal intent, an offence punishable under section 498 of the Indian Penal Code. Such prosecution was legally instituted in such Court and such offence was properly triable by it. Such Court discharged such person under the provisions of section 215 of Act X of 1872. Subsequently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Punjab, *viz.*, enticing away such married woman, and was convicted of that offence. Held, that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be revived in the Punjab Court, and he could not be convicted under the latter part of section 498 of the Indian Penal Code for detaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session.

Reg. v. Venguvayyangar, 6 I. L. R. Mad. 25.

A District Magistrate has no power under the Code of Criminal Procedure 1872, to revive a prosecution in a case where the accused has been improperly discharged under section 215 by a Magistrate having jurisdiction to try the case.

Proceedings of 22nd Octr., 1877. Weir, 292.

A District Magistrate cannot, on the same evidence, direct the revival of a prosecution when the accused person has been discharged under section 215 (Act X of 1872) by a Magistrate having jurisdiction to try the case.

Proceedings of 16th January, 1878. Weir, 292.

The above ruling followed :—The powers conferred in section 297 of the Code are discretionary powers.

Muniyappa Maistri, petitioner. Weir, 293.

Where fresh evidence is forthcoming, the prosecution may be revived without an order from the High Court.

RIGHT OF WAY.

Fenwick, J. B. in re, 6 B. L. R. App. 47; S. C. 14 S. W. R. 72.

When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under section 8 free from any right of way previously enjoyed by the public over such land.

Nyan v. Sher Ali & others, 22 S. W. R. Cr. R. 86.

A Magistrate who, on the application of the party called on, refers a matter as to whether a pathway is a thoroughfare or not for the consideration of a jury under section 523 of the Code of Criminal Procedure, is bound to make an order upon the report of the jury and in accordance with their decision, as required by section 526 of the Code (Act X of 1872).

Empress v. Brojonath Dey, 2 I. L. R. Calc. 425.

Beng. Act III of 1864 which vests public highways in Municipal Commissioners for the purposes of the Act, does not by so vesting them give power to the Municipal Commissioners nor *a fortiori* to the Vice-Chairman alone, to stop up or divert such public highways.

Maharaja of Burdwan v. The Chairman of the Darjeeling Municipality, 5 I. L. R. Calc. 194, 4 C. L. R. 324.

Gates having been placed at one end of a private road by a person claiming to be its sole proprietor, with the intention of preventing the use of such private road by the public between the hours of sunset and sunrise, and the Deputy Commissioner of Darjeeling, acting for the public, having obtained from the Magistrate an order under section 532 of the Criminal Procedure Code (Act X of 1872) that possession of the private

road be not taken by the person claiming to be proprietor to the exclusion of the public... ..... until he shall have obtained the decision of a competent Civil Court adjudging him to be entitled to exclusive possession." Held, that there being no evidence of any one having exercised or claimed to exercise the right of passing over the road between sunset and sunrise, there was no dispute under section 532 of the Criminal Procedure Code; and that the order of the Magistrate was made without authority; and must be set aside. Section 532 does not enable a Magistrate to make a purely declaratory order. It only enables him to prevent arbitrary interruptions by any person of rights actually enjoyed, which have been exercised by the public or a person or class of persons.

Proceedings of 1st June 1868, 4 Mad. Rep. Rul. 11.

Right of way is a right of use of land within the meaning of section 320 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Krishnashet bin Narayanshet, 5 Bom. Rep. Crown Cases, 46.

Held, that an order passed by a mamlatdar under Act V of 1864 (Bombay) directing the accused to keep open a right of way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was therefore within the jurisdiction of the mamlatdar.

Proceedings of 18th Feb. 1867. Weir, 415.

A right to a flow of water, and a right to use a pathway across the land of another, are rights of use of land and water within the meaning of section 532, and cannot be adjudicated upon under section 518 (Act X of 1872) by a Magistrate with subordinate powers.

SANCTION TO PROSECUTE.

Reg. v. Golab Singh, 3 B. L. R. A. Cr. 10.

Sanction to prosecution for perjury may be given by the Court before which the perjury was committed, at any time even after the order for commitment to the Sessions has been made.

Reg. v. Gourmohun Sein & another, 3 B. L. R. A. Cr. 6; S. C. 11 S. W. R. Cr. R. 48.

An application was made to a Collector, under section 50, clause 2 of Act X of 1862, to replace a damaged stamp by a new one. As it appeared the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. Held, that the document not being given in evidence in any proceeding in Court, the Collector was not bound to proceed under sections 169 and 171 of the Criminal Procedure Code (Act XXV of 1861).

Reg. v. Kadir Buksh, 11 S. W. R. Cr. R. 17.

The sanction accorded by a Civil Court under section 169 of the Code of Criminal Procedure (Act XXV of 1861) in a case under section 193, Penal Code need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions.

Reg. v. Haridas Kundu, 4 B. L. R. Ap. 69; S. C. 13 S. W. R. Cr. R. 21.

A Sub-Registrar under Act XX of 1866, has no power to investigate regarding the committal of an offence committed before him in the registration of any document, but should cause the complainant to proceed under section 66 of the Code of Criminal Procedure (Act XXV of 1861) before the Magistrate, or before an officer authorized to receive such complaint. The sanction of the Registrar, under section 95, Act XX of 1866, relates to a prosecution to be instituted by the Sub-Registrar for an offence under the Act.

Reg. v Mahomed Hossein, 16 S. W. R. Cr. R. 37.

The words of section 191 of the Penal Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. The object of the sanction required by section 169 Code of Criminal Procedure (Act XXV of 1861) is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court is subordinate.

Where a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, it was held that the issue of the warrant was a sufficient sanction under section 169 on the part of the Magistrate.

Reg. v. Mahima Chundra Chuckerbutty, 7 B. L. R. 26; S. C. 15 S. W. R. Cr. R. 45.

In a suit by A. for arrears of rent above Rs. 100 a decree was passed against B. C. and D. wherein certain documents filed by them were held to be forgeries. A. applied for and obtained an order from the Deputy Collector who tried the suit, for leave to prosecute B. and C. in the Criminal Court. A. afterwards applied to the Collector for leave to prosecute B. C. and D. whereupon the Collector passed the following order: "Sanction has already been given once by the Deputy Collector. I, however, have no objection to give it a second time as the petitioner desires it." D. was convicted by the Sessions Judge on a charge under section 471 of the Penal Code. On appeal by D. *Held* that no proper leave had been obtained to prosecute D. and this defect was not cured by the subsequent proceedings, and the conviction must be quashed.

Reg. v. Ooma Moye Debea, 13 S. W. R. Cr. R. 25.

Where a Civil Court gives sanction to a prosecution under sections 169 and 170, Code of Criminal Procedure (Act XXV of 1861) it should state with precision the particular offence or offences for the prosecution of which it gives sanction.

Reg. v. Rajkishore Roy, 15 S. W. R. Cr. R. 55.

Where sanction to prosecute on a criminal charge under section 169 of the Code of Criminal Procedure (Act XXV of 1861) was given in the case of only one out of two prisoners who were tried together, the High Court directed the release of the prisoner in regard to whom such sanction was not given.

Reg. v. Ramdhary Singh & others, 10 S. W. R. Cr. R. 5.

Section 170, Code of Criminal Procedure (Act XXV of 1861) refers only to cases where a forged document has been put in evidence in a Civil or Criminal Court; in other cases, a Magistrate is competent *proprio motu* to enquire into allegations of forgery, and no sanction under section 170, Code of Criminal Procedure is necessary.

Reg. v. Woodurnul Singh & Gungoo Singh, 10 S. W. R. Cr. R. 24.

Where the sanction to a prosecution accorded under section 169, Code of Criminal Procedure (Act XXV of 1861) extended only to one of the persons charged, the High Court quashed the commitment and directed the discharge of the persons to whom the sanction did not apply.

Juggut Misser v. Baboo Lal, 5 S W. R. Cr. R. 50.

A former decision in a civil suit in which the issue was the genuineness or otherwise of a kubuleut, and the Court held that it was not genuine, but added (as an *obiter dictum*) that the pottah produced by the other side was authentic, does not bar the jurisdiction of a Civil Court in sanctioning a commitment for forgery in respect of the pottah.

Reg. v. Gobind Chundra Ghose & others, 7 B. L. R. 28 note.

HOBHOUSE, J.:—We think that the Additional Sessions Judge is right in this case. Four persons were severally charged with offences under sections 471 and 193 of the Indian Penal Code, those offences were committed in proceedings before the Civil Court and so under sections 169 and 170 of the Criminal Procedure Code, before proceedings against these persons could have been entertained by the Magistrate at all, there should have been previous sanction for such entertainment on the part of the Civil Court before which the offences were committed. In the case of Deno Bandhu Sircar, the Civil Court does give some sort of sanction. It makes use of these words, that the defendant may, if he wishes, proceed "against the plaintiff for forgery." This, we think is not sufficient permission under the law. The Civil Court, in giving permission to prosecute, should have distinctly stated what the document was for which a prosecution for forgery might be entertained. In the case of the three other prisoners no permission of the Civil Court seems to have been accorded at all. Under these circumstances, we agree with the Additional Sessions Judge that the commitments are void *ab initio*, and we direct that they be set aside, and we further direct that the Additional Sessions Judge do return the commitments to the Magistrate, and direct him, before he recommits the prisoners for trial before the Sessions Judge, to obtain the requisite sanction of the Civil Court in the case of each of the prisoners. Should the Civil Court see fit to direct any prosecution, that

Court will no doubt specify the particular act or acts of forgery, and the particular words which constitute the perjury for which permission will be given to prosecute.

Abdool Luteef, petitioner, 9 S. W. R. Cr. R. 31.

A person against whom information has been falsely given with a view to his injury, has a right to bring a civil action for damages with or without the consent of the public servant against whom the offence was committed, but he cannot bring a criminal charge under section 189 or any other section of Chapter X of the Penal Code without the permission of such public servant, the law looking upon the conduct of the person who gives the false information as an offence not against the individual charged, but against the public servant to whom the false information was given.

Rajcoomar v. Kirthu Ojha, 13 S. W. R. Cr. R. 67; S. C. 7 B. L. R. 29 note.

In a case in which a false charge was brought, a Magistrate gave the accused A. permission under section 169, Code of Criminal Procedure (Act XXV of 1869) to prosecute the complainant B. of an offence under section 211, Penal Code. The Magistrate tried the complaint of A. as a complaint under section 211, but he subsequently framed a charge against B. under section 182, Penal Code, and punished him, under that section. Held, with reference to section 168, Code of Criminal Procedure, that the offences under sections 182 and 211, Penal Code, being offences under Chapter XIV of the Code of Criminal Procedure, the Magistrate was wrong in framing the charge under section 182, without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B.

Narain & Ram Naik, 14 S. W. R. Cr. R. 34.

In the class of cases specified, to which the XXIst Chapter of the Code of Criminal Procedure (Act XXV of 1861) relates, the complaint or authorization of the Court against the authority of which such offence is alleged to have been committed, is sufficient warrant for the commencement of criminal proceedings.

Ashruff Hossein & another, case of, 16 S. W. R. Cr. R. 57.

The form of an accusation by a District Superintendent of Police under section 193 of the Penal Code does not preclude a Magistrate from framing the charge under section 177; the sanction of the District Superintendent required under section 168, Code of Criminal Procedure (Act XXV of 1861) to give the Magistrate jurisdiction, need not be express but may be implied.

Doolar Pandey in re, 17 S. W. R. Cr. R. 10.

The sanction of the Civil Court is not necessary to a complaint of forcible dispossession by a party who was put into possession by the Civil Court, nor is the Magistrate limited in his action by the mistake of the complainant in citing section 182 of the Penal Code as the section under which the offence charged falls.

Bapooram Aham v. Gunga Ram Kacharee, 17 S. W. R. Cr. R. 54.

Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the chief Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam to which the Court of the Moonsiff of Debrooghur before or against which the offence was committed was subordinate, Held, that the sanction required by section 169, Code of Criminal Procedure Act (XXV of 1861) had been given.

Seetaram Sahoo v. Rai Shewgolam Sahoo Bahadoor, 18 S. W. R. Cr. R. 62.

The words "such sanction may be given at any time" in section 169, Code of Criminal Procedure (Act XXV of 1861), must be construed reasonably, and "any time" means a time which does not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. No appeal lies against a Judge's order sanctioning such prosecution.

Reg. v. Grischunder Sirkar, 19 S. W. R. Cr. R. 33.

Where a person was accused under section 182 of the Penal Code with having given false information to a head constable, it was held that the provisions of section 168 of the Code of Criminal Procedure (Act XXV of 1861) had been sufficiently complied with, in as much as the Lower Appellate Court stated in its judgment that "the case had been forwarded under section 182 by the officer in charge of the District Superintendent's office,"—the District Superintendent being the official superior of the head constable.

Money Mohun Dey v. Dinonath Mullick, 22 S. W. R. Cr. R. 11.

In a case in which the High Court was asked, under section 468, Code of Criminal Procedure (Act X of 1872), to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused such leave to defendant, it was held that the High Court would not be justified in exercising the discretion vested in them by section 468, unless it appeared very clearly that there were strong grounds for granting the sanction.

Reg. v. Subal Chunder Gangooly, 22 S. W. R. Cr. R. 16.

The Court declined in this case to say, under section 469 of the Code of Criminal Procedure (Act X of 1872) that a conviction was bad, because the Judge who tried the case, and the Judge who sanctioned the criminal proceedings, was the same person.

Empress v. Irad Ally, 4 I. L. R. Calc. 869; S. C. 4 C. L. R. 413.

A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under sections 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court.

Empress v. Nipcha & another, 4 I. L. R. Calc. 712.

Where sanction has been given under section 468 of Act X of 1872 by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under section 142 without complaint.

Juggut Chunder Mozumdar v. Kasi Chunder Mozumdar, 6 I. L. R. Calc. 440.

The Courts that have jurisdiction to grant a sanction to proceedings under section 468 of Act X of 1872, are the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate.

Per GARTH, C. J. :—Where a case is settled without evidence being gone into, the Court in which the suit was brought, even if it have power to sanction criminal proceedings against any of the parties to such suit under section 468 of Act X of 1872, is guilty of great impropriety and indiscretion in so doing, in as much as it can have had no opportunity of judging of the *bonâ fides* of the claim or defence.

Semble :—A petition presented under Reg. XVII of 1806 not requiring verification, cannot from the fact of it being verified unnecessarily, be made the subject or a prosecution for giving false evidence.

Muttyloll Ghose in re, 6 I. L. R. Calc. 308.

If in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such person under section 471 of the Criminal Procedure Code, (Act X of 1872) without any further enquiry than that which he has already held in his own Court. As a matter of discretion and propriety, it is right for a Court, before committing a person on a charge of perjury upon his own uncontradicted statement, to await the hearing of the appeal, where an appeal is pending, in the case in which he is charged with such perjury.

Empress v. Shibo Behara, 6 I. L. R. Calc. 584; S. C. 8 C. L. R. 265.

A sanction for a prosecution for making a false charge under section 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. The High Court has power to quash an illegal commitment at any stage of the case.

Nusibunnissa Bibee v. Sheikh Erad Ali, 4 C. L. R. 413.

A charge of theft was made before the police, and while enquiries which afterwards resulted in the charge being found by the police not to be proved, were pending, the charge was repeated in a complaint before the Magistrate of the District, by whom the matter was handed over to the Sub-Deputy Magistrate, who reported the charge as false. Whereupon the Magistrate directed the police to enter the charge as false, but without ordering the formal dismissal of the petition of the complainant. On the application of the accused, a counter-prosecution under sections 211, 182, and 500 of the Penal Code, was then sanctioned, and the case sent to the Deputy Magistrate for trial. That officer discharged the accused on the ground that the sanction of the Magistrate was illegal, as there had been, he alleged, (1) no judicial investigation as to the original charge; (2) no formal dismissal of the complaint; and (3) the witnesses produced by the complainant had not been all examined.

Held, that the Deputy Magistrate was bound to accept the sanction made by a superior Court as valid, and to leave the accused to question it

before a competent Court if so advised; that a prosecution may be maintained in respect of a false charge made to the police, or contained in a complaint which has been dismissed under section 147 of the Criminal Procedure Code, although there has been no judicial investigation, and that accordingly the Deputy Magistrate ought to have tried the charge before him.

Kazi Chundra Mozoomdar v. Juggut Chundra Mozoomdar, 7 C. L. R. 330.

A mortgagee presented a petition in the District Court of R. under Regulation XVII of 1866, for foreclosure of a mortgage of certain land which at the time of the execution of the mortgage was situate in the district of R. but which had since been transferred to the district of Pubna. In reply it was alleged that the mortgage had been paid off, and a receipt by the petitioner was put in. The matter was, however, compromised, no evidence having been given on either side. It appeared that the petition for foreclosure was verified by the affirmation of the petitioner, although it was not necessary that it should have been so verified, and the mortgagors applied to the District Court of Pubna, within the jurisdiction of which the land now was, for leave, under section 468 of the Criminal Procedure Code (Act X of 1872) to prosecute the mortgagee under section 193 of the Indian Penal Code for giving false evidence in regard to the receipt, and such leave was granted. Held, that the sanction given by the Judge of Pubna was illegal, on the ground that the District Court at Pubna had no jurisdiction.

Semble:—That, although a superior Court has no right to question the sanction, under section 468 of the Criminal Procedure Code, given by the Court which heard the evidence, yet where the sanction is given by the Court before any evidence in the case has been taken, and without materials before it upon which it could properly exercise a discretion, such a sanction can be set aside.

Barkuttullah Khan *v.* Rennie (I. L. R. 1 All. F. B. 17); Ram Pershad Hazaree *v.* Soomuthra Dabee (5 S. W. R. Misc. F. B. 21).

Barkatullah Khan v. Rennie & another, 1 I. L. R. All. 17.

Held, that the sanction referred to in sections 468 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court. *Per* TURNER, Offg. C. J. and PEARSON and OLDFIELD, JJ.:—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. *Per* SPANKIE, J.:—When sanction is refused by one of the Courts, the refusal does not deprive the superior Courts of the discretion given to them.

Empress v. Sabsukh & others, 2 I. L. R. All. 533.

Held, (SPANKIE, J. doubting) on a reference to the Full Bench, that a Court of Revenue is a Civil Court within the meaning of sections 468 and 469 of Act X of 1872. Held, also, that the declining by a Court of Revenue to sanction a prosecution under sections 468 and 469 of Act X of 1872 under a mistaken view of the law and under the impression that sanction was unnecessary, did not constitute sanction. Held, also, that under the words "at any time" in section 470 of Act X of 1872 sanction

to prosecute cannot be given after the trial and conviction of the accused person.

Observations by STUART, C. J. on the "subordination" of Courts of Revenue to the High Court, within the meaning of sections 468 and 469 of Act X of 1872. Held, by the Judge making the reference (STRAIGHT, J.) on the case being returned to him, that the accused persons having been prosecuted without the sanction required by sections 468 and 469 of Act X of 1872, all the proceedings were invalid, and must be quashed, and the accused must be retried, sanction to their prosecution having been obtained.

Gur Dayal in re, 2 I. L. R. All. 205.

Held (OLDFIELD, J. dissenting) that, for the purposes of section 468 of Act X of 1872, a Magistrate of the first class is subordinate to the Magistrate of the district, and consequently application for sanction to prosecute a person for intentionally giving false evidence before the former may, where such sanction is refused by the former, be made to the latter, and not to the Court of Session, which has not power to give such sanction.

Empress v. Gobardhan Das & another, 3 I. L. R. All. 62.

An instruction to the Magistrate of the district by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such case, does not amount to sanction to a prosecution of such person for such offence, within the meaning of section 468 of Act X of 1872, that section supposing a complaint, or at least an application for sanction for a complaint. Where a Court thinks that there is sufficient ground for inquiring into a charge mentioned in sections 467, 468 or 469 of Act X of 1872, it should proceed under section 471 of that Act. Attention of the Court of Session in this case directed to Reg. *v.* Baijoolal (I. L. R. 1 Calc. 450).

Reg. v. Ootum Chund & another, 2 N. W. P. Rep. All. 287.

The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, is no sufficient sanction under section 168 of the Criminal Procedure Code (Act XXV of 1361). The words "inferior ministerial officer" refer to public servants of a lower grade than an Assistant Superintendent of Police.

Eadara Virana & others v. The Queen, 3 I. L. R. Mad. 400.

The sanction required by section 469 of the Criminal Procedure Code (Act X of 1872) as a condition precedent to the prosecution of a party to a civil suit for forgery of a document given in evidence in such suit, is unnecessary in the case of persons not parties to, but witnesses in, the suit who are charged with the forgery of the document jointly with a party to the suit.

Rami Reddi & Seshu Reddi in re, 3 I. L. R. Mad. 48.

Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may retry the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed.

Sangili Vira Pandia Chinnatambiar v. The Queen, 6 I. L. R. Mad. 29.

On an application for sanction to prosecute under section 468 of the Code of Criminal Procedure, 1872, it is not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges.

In re Kasi Chunder Mozumdar, I. L. R. 6 Calc. 440 approved.

Reg. v. Velayudam Pillai, 6 I. L. R. Mad. 146.

A second class Magistrate of a taluk, not being the official superior of a police station-house officer within the meaning of section 467 of the Code of Criminal Procedure, 1872, cannot sanction a prosecution under section 182 of the Indian Penal Code for giving false information to the station-house officer.

Jagjivan Nanabhai, 1 I. L. R. Bom. 82.

In 1872 Premá Paná and two others obtained a decree against Shridhar Balkrishna in the Bombay Court of Small Causes. For the enforcement of this decree, they presented to the District Judge of Tháná, an application in the form prescribed by section 212 of the Code of Civil Procedure, and alleging that the judgment-debtor had two salt-pans at Trombay, in the Tháná district. The application did not, however, on the face of it state whether it was made under the Civil Procedure Code, or under Act IX of 1850. The Judge entrusted the application for execution to the Subordinate Judge, who ordered an attachment and sale of these salt-pans. In the course of the proceedings which followed, the Subordinate and District Judges considered that the present petitioner Jagjivan Nánábhai had given and fabricated false evidence. On the 25th of October 1875 the District Judge gave his sanction for the prosecution of Jagjivan and others.

Jagjivan prayed the High Court to annul the sanction, alleging in his petition that the proceedings before the Subordinate Judge were *ab initio, coram non judice,* as he had no authority to attach and sell immoveable property in execution of a decree of the Bombay Court of Small Causes.

Held, that although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet, if that decree be transmitted to a Court to which the Code of Civil Procedure (Act VIII of 1859) applies, the latter can under section 287 of that Code, enforce it against immoveable property also. The decree of the Small Cause Court in this case was referred for execution by the District to the Subordinate Judge, and this was perfectly legal under the concluding clause of section 287. The District Judge was, therefore, quite within his province in giving his sanction to the prosecution of the applicant who, he as well as the Subordinate Judge thought, had committed perjury and forgery before the latter.

Quære :—Whether a Court executing the decree of a Small Cause Court under section 78 of Act IX of 1850 could enforce it against immoveable property.

Note:—In Reg. *v.* Hayat bibi (unreported) West and Nanabhai Haridas. JJ. held that the High Court had no authority to interfere with the discretion to grant a sanction for prosecution, even in a case in which the

High Court would not have granted the sanction itself. See also on this subject Barkhat-ullah *v.* Rennie, 1 I. L. R. (Allahabad) 17.

Imperatrix Lakshman Sakharam Vanian Hari & Balaji-Krishna, 2 I. L. R. Bom. 481.

Section 466 of the Code of Criminal Procedure (Act X of 1872) extends to all acts ostensibly done by a public servant, *i. e.*, to acts which would have no special signification except as acts done by a public servant; therefore a máhálkari charged with fabricating the proceedings of a case decided before himself, could not be tried on that charge except with the sanction specified in that section.

Paragraph 1 of section 466, which mentions a sanction by Government or its deputy, is intended to apply, at least, chiefly to the cases of persons specially responsible to Government, such as accountants who have failed in their duty, and paragraph 2 which speaks of sanction by Government alone, to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject on the ground of its being wholly unwarranted or of an excess or impropriety of some kind.

A máhálkari falls within the class of public servants contemplated in paragraph 1 of section 466; a sanction for his prosecution by the District Magistrate, is, therefore sufficient. For the purposes of sanctioning a criminal prosecution under section 468 of the Code of Criminal Procedure, the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000, and an appeal lies direct to the High Court from the decision of that Court in that matter. A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction.

Imperatrix v. Padmanabh Pai, 2 I. L. R. Bom. 384.

For the purposes of section 468 of the Code of Criminal Procedure (Act X of 1872) a Magistrate of the first class is subordinate to the Magistrate of the district: a sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is, therefore, legal and sufficient, notwithstanding the refusal by the former to give such sanction himself.

Semble :—That the Sessions Court has not power to give such sanction.

Savanta in re, 5 I. L. R. Bom. 137.

The mamlatdár's Court, constituted by Bombay, Act III of 1876, is a Civil Court within the meaning of section 468 of the Code of Criminal Procedure (Act X of 1872); therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the mamlatdár's Court, shall not be entertained in the Criminal Courts except with the sanction of the mamlatdár's Court, or of the High Court to which it is subordinate.

Empress v. Gaspar D'Silva, 6 I. L. R. Bom. 479.

A District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery, is not debarred by section 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Sessions Judge.

Venkatageri, Rajah of, petitioner, 6 Mad. Rep. 92.

An application under section 169 of the Criminal Procedure Code, (Act XXV of 1861) praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed.

Proceedings of 29th March 1871, 6 Mad. Rep. Rul. 22.

The sanction of Government is required for the prosecution of any Judge if a complaint is made against him as Judge. Construction of section 167 of the Criminal Procedure Code (Act XXV of 1861).

Kristna Rau, Appellant, 7 Mad. Rep. 58.

Upon the construction of section 167 of the Criminal Procedure Code, (Act XXV of 1861), Held, that the section by implication vests in the Court or authority to whom the Judge or other public servant not removeable, &c. is subordinate, the power of sanctioning or directing such prosecution. It does not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority therefore, has it, unless there is a limitation. It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. *Semble*, the objection (to the want of sanction) should be taken at the trial.

Proceedings of 12th Nov. 1872, 7 Mad. Rep. Rul. 12.

A Sub-Magistrate refused to grant sanction for a prosecution under section 169 of the Criminal Procedure Code on the sole ground that the perjury was alleged to have been committed before his predecessor in office. Held, that the Sub-Magistrate was wrong in his construction of the section. The Court before which the perjury is alleged to have been committed is to give the permission. The change of incumbent leaves it still the same Court.

Reg. v. Khushal Hiraman & Indragir, 4 Bom. Rep. Crown Cases, 28.

The prosecutor applied to a Civil Court for leave to prosecute, under section 170 of the Criminal Procedure Code (Act XXV of 1861), a witness who had appeared before the Court. The Court granted the permission as applied for. The prisoner was tried for and convicted of an offence coming under the provisions of section 159 of the Criminal Procedure Code. Held, that the mention of section 170 in the permission to prosecute granted by the Civil Court might be treated as surplusage, and that the prisoner was rightly convicted. Held, also, that the copy of a lease is not "a valuable security" within the meaning of section 30 of the Indian Penal Code.

Reg. v. Ganu bin Tatia Selar, 5 Bom. Rep. Crown Cases, 38.

Prosecution for non-attendance in obedience to a summons was entertained without the sanction or complaint required by section 168 of the Criminal Procedure Code, (Act XXV of 1861). Held, that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt.

Reg. v. Muhammad Khan valad Imam Khan, 6 Bom. Rep. Crown Cases, 54.

Where the Magistrate, before whom a witness gives false evidence, himself commits such witness for trial, his sanction of the prosecution, under section 169 of the Criminal Procedure Code, (Act XXV of 1861) will be implied.

Reg. v. Parshram Keshav, 7 Bom. Rep. Crown Cases, 61.

Section 167 of the Code of Criminal Procedure (Act XXV of 1861) requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced; and, until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. Where a complaint charged a person who was one of the public servants mentioned in section 167 of the Criminal Procedure Code with committing acts which if committed by a private individual would have constituted the offence of extortion: It was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.

Reg. v. Malhar Ramchandra, 7 Bom. Rep. Crown Cases, 64.

The sanction for the prosecution of a kulkarni for making a false report as a public servant, required by section 167 of the Code of Criminal Procedure (Act XXV of 1861) may be given by the mamlatdár or by the pátil to whom such kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose.

A kulkarni who makes a false report with reference to an offence committed in his village with intent &c. is punishable under section 218 of the Indian Penal Code.

Reg. v. Tai, wife of Nanchand, 8 Bom. Rep. Crown Cases, 24.

Sanction for the prosecution of the accused was accorded by an Assistant Session Judge in the following terms: "There is no doubt whatever that Tai, Baji, and Bálá, these three persons, made before me certain statements contradictory of the statements which they had made before the Committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here (*i. e.*, I give my sanction) for their prosecution." Held, that this gave sufficient sanction for the prosecution of the accused under section 193 of the Indian Penal Code, and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted.

Reg. v. Subi Sani, 8 Bom. Rep. Crown Cases, 28.

Where a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under sections, 463 and 471 of the Indian Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under section 193 (giving false evidence): *It was held* that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge.

Reg. v. Vinayak Divakar, 8 Bom. Rep. Crown Cases, 32.

The Local Government in sanctioning or directing under section 167 of the Criminal Procedure Code (Act XXV of 1861) a charge against a public servant of an offence as such public servant has power to limit its sanction, by giving directions as to the person by whom and the manner in which, the prosecution is to be preferred and conducted; and a Court has no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions.

Semble:—The Local Government has power in the like case to direct that the accused public servant shall be tried before a specified tribunal, being one having jurisdiction in that behalf. Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as Mr. C. might be prepared to prefer against him, and there was nothing on the record to show, nor did it otherwise appear that Mr. C. had preferred any charge against, or taken any part in the prosecution of the accused public servant, the High Court quashed the conviction of the accused as having been without jurisdiction.

Balaji Sitaram in re, 11 Bom. Rep. 34.

When it is intended to charge a person with having made a false statement in the Court of a Magistrate or (alternatively) a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. A sanction for a prosecution under section 470 of the Criminal Procedure Code (Act X of 1872) must designate the Court where the false statement was alleged to have been made and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms although details may be omitted.

Reg. v. Ram Gholam Singh & others, 11 S. W. R. Cr. R. 22.

Where a prosecution of an offence under Chapter X of the Penal Code is instituted by an inferior ministerial servant under sanction of the authority of his official superior, the provisions of section 168 of the Code of Criminal Procedure (Act XXV of 1861) are complied with.

Gobind Chunder Ghose & others, Case of, 10 S. W. R. Cr. R. 41.

The Civil Court, in giving permission to prosecute under sections 169 and 170, Code of Criminal Procedure (Act XXV of 1861) should, in a case of forgery, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified.

Jugut Mohini Dassee & Madhusudhan Dutt in re, 10 C. L. R. 4.

There being nothing in the law requiring that sanction to prosecute under section 211 of the Indian Penal Code should only be granted upon application by a private prosecutor, a district Magistrate is competent under section 468 of the Code of Criminal Procedure (Act X of 1872) of his own motion to direct a prosecution where a complaint has been entertained and found to be false by a Magistrate subordinate to him.

Giridhari Mondul & another in re, 10 C. L. R. 46.

A local investigation, upon information given by A. that a dacoity had been committed, having been made under section 115 of the Criminal Procedure Code (Act X of 1872) the district Magistrate, upon the report of the enquiry made in the local investigation, without giving A. an opportunity of having a judicial enquiry into the charge preferred by him passed the following order: "B. (one of the persons alleged by A. to have committed the offence) is directed to bring a case under section 211 of the Penal Code" and he directed the Superintendent of Police to take charge of the prosecution. Held, that the order quoted could not be considered a sanction under section 468 of the Criminal Procedure Code, and that if it were intended to be such, it was expressed in an improper manner. Held, also, that the direction that the Superintendent of Police should take charge of the prosecution was given without jurisdiction, and was calculated to prejudice the person against whom the prosecution was directed. Held, further, that, their proceedings in the original charge not having been before a Court, no sanction under section 468 was requisite.

Jadunath Hazra & Annoda Prosad Sircar in re, 11 C. L. R. 53.

On an application to a Moonsiff for sanction to prosecute, the following order was made upon the petition: "If the petitioner thinks there is sufficient evidence against A. I have no objection to give such sanction." Held, that the order was not a sufficient sanction to support a prosecution.

Proceedings of 10th Sep., 1881. Weir, 244.

In respect of the discretionary power of sanctioning prosecutions for perjury, the materiality of the evidence to the matters in issue is not the only or the chief point to be regarded.

Proceedings of 17th Jan., 1877. Weir, 397.

A Subordinate Magistrate who commits a case for trial to a Court of Session is subordinate to the Court of Session in matters connected with, and arising out of the trial. The Sessions Court may accordingly sanction a prosecution for giving false evidence, of a witness who gave evidence in the preliminary enquiry, although the witness may not have been examined in the Sessions Court.

Proceedings of 13th April, 1881. Weir, 398.

The power to sanction prosecutions for perjury, &c., under this section (468), is not restricted to cases in which an appeal is heard; but vests in the superior Court as a Court exercising supervision and control over the subordinate Court, *e. g.*, it may be exercised on a perusal of the records. It is immaterial how the superior Court is put in motion.

Proceedings of 12th May, 1881. Weir, 399.

A Registrar acting under sections 73, 74 and 75 of the Registration Act being a Court within the meaning of section 469 of the Code of Criminal Procedure (X of 1872), a prosecution for forgery of a documont adjudicated on by the Registrar cannot be entertained without the Registrar's sanction.

Proceedings of 3rd March, 1881. Weir, 401.

Where the law prescribes that a complaint shall not be entertained without sanction, the question whether sanction should be given must be duly considered and determined by the competent authority; and a distinct order, in however general terms, must be passed.

It is not a sufficient fulfilment of the condition that an officer competent to give the sanction himself entertains the complaint.

Koonj Beharee Ghur, 11 S. W. R. Civ. Rul. 171.

Held, that, in a case under section 171, Code of Criminal Procedure (Act XXV of 1861) the initiative is taken by the party interested, and the Court takes no part in the matter, except in the way of giving or refusing its sanction. Section 170 contemplates cases in which the Court itself takes the initiative, but it was not intended that the Court should proceed in the manner there described, except where the propriety or necessity of doing so was unmistakeable.

Ishanchunder Ghose in re, 15 S. W. R. Civ. Rul. 352.

Where an offence is committed against a Court of first instance, the Appellate Court to which it is subordinate is competent to sanction a prosecution under Chapter XI of the Code of Criminal Procedure (Act XXV of 1861). Sanction to such a prosecution may be given even if the offence is abetment.

Mahalingaiyan Ex parte, 6 Mad. Rep. 191.

A Civil Court has no power to make an order under section 170 of the Criminal Procedure Code (Act XXV of 1861) sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause Court side, that Court not being subordinate to the Civil Court.

Empress v. Kally Mohun Mookerjee, 13 C. L. R. 117:

Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under section 195 of the Criminal Procedure Code (Act X of 1882), the High Court refused to interfere, there being no evidence that the want of sanction had occasioned a failure of justice.

Abbilakh Singh v. Khublall, 10 I. L. R. Calc. 1100.

A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for, had had notice of the application and an opportunity of being heard.

SECURITY FOR GOOD BEHAVIOUR.

Reg? v. Komul Kissen, 11 S. W. R. Cr. R. 35.

In an enquiry under section 306 of the Code of Criminal Procedure (Act XXV of 1861) as to proceedings against persons required to give security for good behaviour, a Magistrate has no power to use the information which the police may have obtained as evidence in the case.

Juswunt Singh in re, 1 Ind. Jur. N. S. 301; S. C. 6 S. W. R. Cr. R. 18.

Where a person is confined in default of giving security for his good behaviour, under Chapter XIX of the Code of Criminal Procedure (Act XXV of 1861) a second security cannot be demanded after the expiration of the first term of confinement, except on some new proof of bad livelihood, or that the person is not capable of following an honest calling. An order of a Sessions Judge confirming an order of the above nature made by the Magistrate is open to revision, under section 404, though not appealable under section 408.

Narain Sooboodhi, petitioner, 6 S. W. R. Cr. R. 6.

The order in this case calling upon the prisoner to furnish security for good behaviour, under section 297 of the Code of Criminal Procedure (Act XXV of 1861) set aside as erroneous, that section not referring to persons of a violent or turbulent character.

Brindabun Chunder Dass, petitioner, Tarineechurn Mozoomdar, petitioner, 19 S. W. R. Cr. R. 29.

Where sureties who were required to show cause under section 305 of the Code of Criminal Procedure (Act XXV of 1861) why the bond executed by them should not be put in force, failed to establish by evidence the statements which they made, it was held that the order putting the bond in force was a proper one.

Per PHEAR, J.:—Although the form of security-bond given in the Form (F.) of the appendix combines two bonds, namely, one for the principal, and one on the part of the sureties, the provisions even of section 300 would be complied with if these two bonds were upon two pieces of paper instead of one.

Reg. v. Gungaram Potdar, 24 S. W. R. Cr. R. 10.

A Sessions Judge has no power under Act X of 1872, section 504 or any of the preceding sections, to decide as to the necessity for taking security for good behaviour, or, without enquiry to pass orders as to the nature of the security to be furnished, or as to the time it is to remain in force. The jurisdiction as to the necessity is in the Magistrate, and after sending the accused to the Magistrate under section 504, the Sessions Judge *in functus officio*.

Reg. v. Shona Dagee, 24 S. W. R. Cr. R. 13.

When a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound, then brought up for the purpose of being bound.

Hamidooddeen Ahmed, petitioner, 24 S. W. R. Cr. R. 37.

Act X of 1872, section 505 enables the Magistrate to require security for good behaviour, whenever it appears to him, from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker or thief, or a receiver of stolen property, knowing the same to have been stolen or of notoriously bad livelihood, or if a dangerous character. But when the evidence is entirely in a person's favour, and shows him to be of excellent character, and in every

respect contrary to the sort of person against whom the section is directed, to apply its provisions to him on a weak and unsupported charge of mischief by fire, is foreign to the intentions of the Legislature, and not only illegal but oppressive.

Empress v. Dedar Sircar, 2 I. L. R. Calc. 384.

On a requisition from the High Court a Magistrate is bound to state the grounds upon which he fixed the amount of security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security.

Empress v. Kalachand Dass & others, 6 I. L. R. Calc. 14; S. C. 6 C. L. R. 128.

The powers given by sections 505 and 506 of Act X of 1872 should be exercised with extreme discretion; the former of these sections is not intended to apply to persons of "by no means a reputable character." An order requiring persons to deposit cash in lieu of entering into a bond as security for their future good behaviour is bad in law.

Dedar Baksh & Halal Chor in re, 1 C. L. R. 95.

The amount of the security to be furnished for good behaviour should be such as to afford the person a fair chance of complying with the order, so as not to make the alternative imprisonment unavoidable. Such imprisonment is not as a punishment for a crime committed, but as a protection to society against the perpetration of a crime by the individual on his failing to furnish other security. When the amount of security required is *primâ facie* unreasonable, the High Court can call upon the Magistrate to certify the grounds for fixing that amount. 4 Mad. 46 approved and followed.

Umbica Proshad in re, 1 C. L. R. 268.

The object of Chapter XXXVIII, Code of Criminal Procedure (Act X of 1872) is the prevention not the punishment of crime. When a charge of a specific offence is under trial, proceedings under Chapter XXXVIII should not be instituted. Juggut Chunder Chuckerbutty (I. L. R. 2 Calc. 110) followed.

Empress v. Nawab & another, 2 I. L. R. All. 835.

Held, that section 506 of Act X of 1872 solely relates to the calling upon persons of habitually dishonest lives, and in that sense "desperate and dangerous" to find security for good behaviour, as a protection to the public against a repetition of crimes by them in which the safety of property is menaced, and not the security of the person alone is jeopardised. Where, therefore, the evidence adduced before the Magistrate did not show that a person was "by habit a robber, house-breaker or thief, or a receiver of stolen property, knowing the same to have been stolen," but showed only that he had been guilty of acts of violence, held that the Magistrate could not, under section 506 of Act X of 1872, order such person to furnish security. Observations regarding the evidence on which the procedure of section 506 should be enforced.

Reg. v. Sheo Buksh, 2 N. W. P. Rep. All. 295.

Where a person, under section 297 of the Criminal Procedure Code (Act XXV of 1861) is ordered to provide security for his good behaviour, the order should, under section 300, state the number of sureties required from the defendant. The object of the law as to security for good behaviour is, that sureties shall be responsible for the good behaviour of the person called upon to provide security, not that a deposit be made in cash.

Reg. v. Shunkur & others, 2 N. W. P. Rep. All. 406.

In proceedings taken against a person to obtain security for good behaviour under section 296 of the Criminal Procedure Code (Act XXV of 1861), the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross-examine them.

Reg. v. Budla & others, 2 N. W. P. Rep. All. 455.

To justify a Magistrate in taking action under section 296 of the Criminal Procedure Code (Act XXV of 1861), there must be evidence before him legally sufficient to establish the fact that the person charged is a person of the character described in the section.

Reg. v. Misree Lall & Udda, 4 N. W. P. Rep. All. 117.

Previous convictions for a simple breach of the peace are not sufficient to justify a Magistrate in demanding security under section 296 of Act XXV of 1861. Nor is repute, that a person is one of the leaders of a gang of petty bullies and extortioners, sufficient to justify a conviction under section 297 of the same Act, unless in addition it be shown that he is of a character so desperate and dangerous as to render his release, without security of one year, hazardous to the community.

Reg. v. Chocha Rai, 6 N. W. P. Rep. All. 366.

Where it becomes necessary to adjourn the hearing of a summons case, the attendance of the accused person at the adjourned hearing can be secured under the provisions of section 204 of Act X of 1872. Therefore, where a person appeared in answer to a summons requiring him to find security for good behaviour for one year, and the Magistrate adjourned the hearing of the case, in order that the accused person might produce evidence as to character, the Magistrate was empowered to take a personal recognizance from the accused person for his appearance at the adjourned hearing.

Reg. v. Gauni & another, 7 N. W. P. Rep. All. 249.

An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth Rs. 200 was held to be illegal.

Pedda Siva Reddi & another, 3 I. L. R. Mad. 238.

The exercise of the power given by section 505 of the Criminal Procedure Code (Act X of 1872) is not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged.

Proceedings of 26th April 1869, 4 Mad. Rep. Rul. 47.

Where a Magistrate required security from persons for their good behaviour under section 296 of the Criminal Procedure Code (Act XXV of 1861), and in default sentenced them to six months' rigorous imprisonment, held that the order was illegal, section 301 requiring that they should be committed to prison until they furnish the security demanded. In fixing the amount of security the Magistrate should not go beyond a sum for which there is a fair probability of the defendant being able to find security.

Reg. v. Byha valad Surjun & others, 1 Bom. Rep. 91.

If a Sessions Judge be of opinion that a person acquitted by him ought to give security for good behaviour, he should discharge him, and inform the Magistrate of his opinion, that security should be taken, leaving the Magistrate to take the necessary steps for that purpose, and the Session Judge should not send the party in custody to the Magistrate.

Reg. v. Krishnaji Bapuji, Gaikavad, 3 Bom. Rep. Crown Cases, 39.

A direction annexed to a sentence of imprisonment under section 448 of the Indian Penal Code—that the convict be brought up, at the expiration of the sentence, in order that he may give security for good behaviour for the period of one year—reversed: as not being authorised by section 296 of the Criminal Procedure Code (Act XXV of 1861).

Proceedings of 8th April, 1876. Weir, 413.

An order to give security for good behaviour must specify a definite period for which the security is required.

Proceedings of 4th Sept., 1874. Weir, 414.

The order to be issued under section 510 should direct that the person bound to give security be imprisoned until the security is found, provided always that the period of such imprisonment is in no case to exceed the period for which the person is bound.

Tamiz Mandal v. Umed Karigar, 9 I. L. R. Calc. 215.

An accused person was convicted of theft and sentenced to two years' rigorous imprisonment, and was further ordered to enter into his own recognizances for Rs. 50 and find two sureties each for a like sum, for his good behaviour for one year after the term of his imprisonment had expired; in default to suffer rigorous imprisonment for one year. Held, that the latter part of the order was bad, and that the Magistrate should have proceeded under the provisions of section 504, clause 2 of the Code of Criminal Procedure (Act X of 1872). The Empress *v.* Partab, (I. L. R. 1 All. 666) followed.

SESSIONS CASE.

Ishenchunder Kurmokar v. Hurry Doyal Kurmokar, 3 C. L. R. 263.

In section 296 of the Code of Criminal Procedure (Act X of 1872) "Sessions cases" mean cases exclusively triable by a Court of Session.

Empress v. Tarrachand Bagdi & others, 7 C. L. R. 168.

The term "Sessions case" in section 296 of the Code of Criminal Procedure (Act X of 1872) refers to cases triable by a Court of Sessions only. Empress *v.* Kanchan Singh, I. L. R. I All. F. B. 413 and Joy Kurn Singh *v.* Man Patuck, 21 W. R. 42 followed.

Empress v. Kanchan Singh, 1 I. L. R. All. 413.

The appellant after his discharge by the Assistant Magistrate, upon a charge under section 457 of the Indian Penal Code, was committed to the Sessions Court by order of the Sessions Judge under the Criminal Procedure Code, 1872, section 296 upon charges under sections 380 and 457 of the Penal Code. Held by the Full Bench (SPANKIE and OLDFIELD, JJ. dissenting) that the commitment was illegal, and that "Sessions case" within the meaning of section 296 of the Code of Criminal Procedure is a case exclusively triable by the Court of Session.

Reg. v. Gulabdas Kuberdas, 11 Bom. Rep. 98.

To make a case a "Session case" within the meaning of section 4 of the Code of Criminal Procedure (Act X of 1872), it is not necessary that it should be triable exclusively by the Court of Session.

SESSIONS JUDGES.

Reg. v. Bhobaneshur Gossamy, 4 S. W. R. Cr. R. 19.

The grounds of a Sessions Judge's decision should be given in English, and a memorandum recorded, in accordance with section 382, Code of Criminal Procedure (Act XXV of 1861) setting forth the precise offence of which the prisoner is convicted.

Reg. v. Bidadhur Biswas & others, 7 S. W. R. Cr. R. 53.

A Sessions Judge should designate accused persons by name and not by numbers.

Reg. v. Madho Surrun Singh, 8 S. W. R. Cr. R. 18.

The prisoner was declared entitled to a finding by the Sessions Judge as to the sufficiency or otherwise of the evidence adduced by him to prove his *alibi*, and that he did not abscond to evade justice.

Where a Sessions Judge has, under section 295 of Act X of 1872 called for the record of an inferior Court, he is, before referring the case to the High Court for orders, bound to call upon the inferior Court for an explanation of the order passed, and should submit such explanation, together with the rest of the record to the High Court.

Mailamdi Fakir v. Taripulla Pramanik, 8 I. L. R. Calc. 644.

A Sessions Judge has no power to direct a Division Magistrate to cancel his proceedings reviewing the Calendars of Magistrate's subordinate to him.

Proceedings of 18th August, 1873. 7 Mad. Rep. Rul. 27.

There is no provision of the Criminal Procedure Code (Act XXV of 1861) which makes it lawful for a Court of Session to call for and examine the record of a case tried by a Sub-Magistrate, where no sentence or order has been passed thereon by the *immediately* subordinate Court of the Magistrate.

Reg. v. Bhaskar K. Kharkar, 3 Bom. Rep. Crown Cases, 1.

A Sessions Judge ought not to call for a report from the Magistrate of the District in any case in which it is not competent to such Sessions Judge to call for the record and proceedings, (*e. g.*), in the case of a person tried by a Subordinate Magistrate who has appealed to the District Magistrate.

Reg. v. Girdhar Dharamdass, 6 Bom. Rep. Crown Cases, 33.

In trials held by the Magistrate of the District or Magistrate F. P. in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report.

The powers of a Sessions Judge to call for records under section 295 are at all times to be exercised, and such powers may be put in force not merely on matters coming before the Judge in Court, but also on matters coming to his knowledge on reliable information.

Proceedings of 21st Nov. 1878. Weir, 313.

SECURITY TO KEEP THE PEACE.

A statement by a complainant (believed by the Magistrate) that he expected the defendant at any time to make an attempt on his person or property is credible information, within the meaning of section 282 of the Code of Criminal Procedure (Act XXV of 1861) of an intended breach of the peace. The Magistrate may require the accused to deposit money in lieu of security for his good behaviour.

Reg. v. Kristendro Roy, S. W. R. Cr. R. 30.

A Magistrate is not competent, under section 282 of the Criminal Procedure Code, to order persons to enter into bonds to keep the peace merely upon the statement of the complainant, on which the summons was granted, and without taking further evidence, or giving the parties an opportunity of cross-examining the complainant.

Reg. v. Nusseeroodden, 2 N. W. P. Rep. All. 461.

Reg. v. Puring Sing, 13 S. W. R. Cr. R. 20.

The High Court declined to interfere with an order passed by a Magistrate in a case in which he ordered security to be taken for the preservation of the peace, where it appeared that the evidence was sufficient to warrant the order, although such evidence was taken in the vernacular, and in disregard to the provisions of section 267 of the Code of Criminal Procedure (Act XXV of 1861).

Maghan Misser v. Chammun Teli, 2 B. L. R. Cr. 7; S. C. 10 S. W. R. Cr. R, 46.

Before making an absolute order directing a person to enter into a bond to keep the peace, the Magistrate must take the evidence on which he bases the order, in the presence of the accused.

Tarinee Kant Lahoory Chowdry, petitioner, 8 S. W. R. Cr. R. 79.

There is nothing in the Criminal Procedure Code (Act XXV of 1861) which makes it imperative on a Magistrate to confront the accuser and the accused in a case under section 282 of that Code; and if a Magistrate considers a statement on oath of a complainant to be "credible information" under that section, there is no reason why he should not call on the accused to give security, the sufficiency of such "credible information" being ordinarily left to the Magistrate to determine.

Bisseshur Narain Mahtah, petitioner, 8 S. W. R. Cr. 83.

The provisions of section 318 of the Code of Criminal Procedure (Act XXV of 1861) are substantially complied with when the Magistrate states that he is satisfied that the disputes between the parties were likely to induce a breach of the peace, and records his opinion that the only way of bringing those disputes to a satisfactory settlement was by proceeding under the section quoted.

Chamaro Malo v. Kashi Chunder Lalla & others, 8 S. W. R. Cr. R. 85.

A petition unsupported by any complaint or deposition on solemn affirmation, cannot be considered "credible information" with section 282 of the Code of Criminal Procedure, on which to warrant a Magistrate to demand security to keep the peace.

Diego De Silva v. Jehangeer & others, 7 S. W. R. Cr. R. 23.

Where a matter in respect of which further security to keep the peace is required is the same as that before the Magistrate on the first occasion, the case can only be dealt with under section 290 of the Code of Criminal Procedure (Act XXV of 1861).

Kalipershad Sirdar v. Futteh Chund Dass & others, 9 S. W. R. Cr. R. 16.

Notice to show cause why security should not be demanded must be served before a Magistrate can pass orders requiring security to keep the peace.

Emam Ali v. Sudderuddeen & others, 9 S. W. R. Cr. R. 18.

That a Magistrate has acted without proper discretion in ordering a prosecution is no ground for reversing his order. Where a Magistrate thinks that the acts of the accused are likely to lead to a breach of the peace, and their statements as to possession of land are false, he may proceed to try whether the accused should not be charged with an unlawful assembly. The directions of the law as to appeals from orders and appeals from sentences are distinct.

Luteef Hossein prisoner, 10 S. W. R. Cr. R. 1.

It is not necessary that an order issued by a Magistrate under section 62 of the Code of Criminal Procedure (Act XXV of 1861) whereby a breach of the peace was prevented, should be supplemented by a proceeding under section 318 of the same Code.

Nursingh Narain, prisoner, 10 S. W. R. R. Cr. R. 1.

A summons under section 282 of the Code of Criminal Procedure (Act XXV of 1861) to show cause why the person summoned should not enter into a bond to keep the peace can legally issue on information, if it be credible, contained in a case which was brought against the person summoned for illegal assembly, of which he was acquitted. The order directing that the defendant should enter into the bond cannot, however, be made until the Magistrate has taken fresh evidence, properly given, on the appearance of the accused before him or his agent) and before he has adjudicated judicially on such evidence that it is necessary for the preservation of the peace that a bond should be taken.

Mussamut Anundee Kooer v. Ranee Sooneet Kooer, 10 S. W. R. Cr. R. 40.

A Magistrate may, under section 291 of the Code of Criminal Procedure (Act XXV of 1861) cancel an order passed by him under section 282 of that Code, summoning a person to show cause why he should not enter into a bond to keep the peace.

Bindrabun Shaha, Case of, 10 S. W. R. Cr. R. 41.

The report of a police officer is "credible information" within section 282 of the Code of Criminal Procedure (Act XXV of 1861).

Rajendro Kishore Roy Chowdhry in re, 10 S. W. R. Cr. R. 55.

A report of an Inspector of police and the evidence given by the same Inspector are not sufficient to justify an order binding a person to keep the peace.

Mullick Fukeerun Case of, 11 S. W. R. Cr. R. 6.

It is not necessary to call witnesses in support of an information laid before a Magistrate previous to requiring security for keeping the peace.

Kartick Chunder Bal v. Chunder Nath Chuckerbutty, 15 S. W. R. Cr. R. 56.

Where a complaint was made by A. that timber belonging to his master which had been cut and stacked in a certain place had been removed by B. who said that the timber was cut not by A.'s master but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under section 62 of the Code of Criminal Procedure (Act XXV of 1861), but was bound to try the charge brought against B., and either restore the timber to A., or leave it where it was according to the result of the investigation.

Coomar Poresh Narain Roy, petitioner, 16 S. W. R. Cr. R. 45.

Before proceeding to bind parties to keep the peace, summons should be duly issued to the witnesses, who should be examined *in the presence of the parties*. The accidental presence of any agent, is not legally speaking, such presence before which an examination is legally sufficient.

Tarafdi Mundul v. Chunder Bhoosun Banerjee & others, 16 S. W. R. Cr. R. 64.

Before initiating proceedings under section 318, Code of Criminal Procedure, (Act XXV of 1861) a Magistrate must satisfy himself on legal evidence that there exists a likelihood of a breach of the peace and also record a proceeding stating the grounds of his being so satisfied.

Brojendro Koomar Rai Chowdhry alias Dighoo Baboo, petitioner, 17 S. W. R. Cr. R. 35.

A Magistrate acts without jurisdiction in making an order binding a person to keep the peace, when there is no complaint before him of a breach of the peace being likely to be committed by such person, and without taking any evidence in the matter.

Noor Mahomed v. Nil Rutun Bagchee, 18 S. W. R. Cr. R. 2.

The kind of enquiry required to be held by a Magistrate in cases under section 282, Code of Criminal Procedure, is a full judicial enquiry, evidence being taken in the presence of the parties charged, and opportunity given for the cross-examination of witnesses.

Lalla Mitterjeet Singh v. Rajcoomar Sircar, 18 S. W. R. Cr. R. 22.

Where a new *haut* was established about half a mile from a long established market, and the Deputy Magistrate was of opinion that the holding of the two *hauts* on the same days of the week would induce a breach of the peace, Held, that the order passed by the Deputy Magistrate, under section 62 of the Code of Criminal Procedure (Act XXV of 1861) directing petitioner to abstain from holding his *haut* on certain days, was not beyond his power or out of his jurisdiction to pass, and therefore was one with which the High Court could not interfere under section 404.

Kashi Chunder Dass v. Hurkishore Dass, 19 S. W. R. Cr. R. 47.

The words "or to do any act that may probably occasion a breach of the peace" in section 282 Act XXV of 1861 were construed to mean a wrongful act, and not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his right of property, because another person would be likely to commit a breach of the peace, if he did so.

Reg. v. Gunga Singh, 20 S. W. R. Cr. R. 36.

In a case in which parties are summoned to show cause why they should not be bound down to keep the peace, the proceedings should be conducted with due regard to the provisions of sections 491 and 492 of the Code of Criminal Procedure, (Act X of 1872) and the summons should distinctly specify the amount and nature of the security required, and the time for which the security is to run.

Bholanath Bose v. Komuruddin, 20 S. W. R. Cr. R. 53.

In a case in which the Magistrate passed an order under section 518, Code of Criminal Procedure (Act X of 1872) for closing a *hât* on the ground that it was only a mile apart from another *hât* and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, section 518 applying only when a breach of the peace was imminent:—Held, that, under Explanation 2, section 518, the order could be made in all cases upon such information as satisfied the Magistrate, and as the order was one which the Magistrate had power to make and was not contrary to law, the High Court could not under section 297, Code of Criminal Procedure set it aside. Orders made under section 518 are not judicial proceedings, and therefore are not within section 297.

Reg. v. Abdool Huq, 20 S. W. R. Cr. R. 57.

To justify an order under section 491, Act X of 1872, calling on a person to give security to keep the peace, there must be a reasonable probability of a breach of the peace being committed, and not merely a bare possibility of a breach of the peace.

Reg. v. W. Harvey & others, 20 S. W. R. Cr. R. 68.

In a case of dispute regarding land between A. and B. (the latter a resident of another district) a Deputy Magistrate, on the report of the Police that there were serious apprehensions of a breach of the peace, summoned not only A. and the servants of B. but also B.; and without taking any evidence against B., found him guilty with the rest, under section 497, Code of Criminal Procedure, and directed him to enter into a bond and to find security to keep the peace. Held, that the order as regards B. was illegal: it was accordingly set aside.

Ramkissen Acharjee Chowdhry, petitioner, 21 S. W. R. Cr. R. 6.

To constitute a proper foundation for an order under section 491 of the Code of Criminal Procedure (Act X of 1872) it is necessary that the Magistrate should adjudicate upon legal evidence before him that the person against whom the order is made is likely to commit a breach of the peace, and the Magistrate should give notice to the party who is to be affected by the order, of the particular conduct on his part which is complained of.

Where such notice was given, and the ground of complaint to which such notice had reference was found by the Magistrate to be unfounded, it was held that the Magistrate could not proceed to adjudicate that an entirely different ground existed upon which it was likely that the party charged would commit a breach of the peace.

Reg. v. Bebheki Pathak, 21 S. W. R. Cr. R 12.

A Bench of Magistrates, whether empowered under section 224 or 225 cannot try a case of breach of the peace or any offence except those mentioned in sections 222 and 225, Code of Criminal Procedure (Act X of 1872).

Reg. v. Ramchunder Roy, 21 S. W. R. Cr. R. 28.

A police report is under Act X of 1872, section 530, explanation, sufficient information on which a Magistrate may take action in a case of apprehended breach of the peace under section 491 of that Act.

Dilloo Singh v. Ootum Singh & others, 22 S. W. R. Cr. R. 9.

In a case in which the accused were charged with unlawful assembly and trespass, the Magistrate acquitted the accused, but eventually ordered the parties to execute bonds and furnish security, refusing to take further evidence and relying on the evidence which had been given before him in the original case in the presence of the accused. Held, that the proceedings were irregular: the order was accordingly set aside.

Narain Soobodhee, petitioner, 22 S. W. R. Cr, R. 37.

In making an order for security to keep the peace under section 505, Code of Criminal Procedure (Act X of 1872) a Magistrate has no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e. g.*, a condition requiring the accused to furnish two sureties being persons of respectability and substance not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety under section 516 must be a valid and reasonable ground.

Reg. v. Shukur Mahomed, 22 S. W. R. Cr. R. 68.

On a complaint being lodged of criminal trespass and assault, the Magistrate recorded, that after interrogating the witnesses he found that a breach of the peace was likely to ensue, and proceeded to examine the complainant and two of his witnesses and the accused, and thereupon ordered that the parties should furnish recognizances to keep the peace: Held, that the parties had not had opportunity afforded them under section 492, Code of Criminal Procedure, (Act X of 1872) to show cause why they should not be bound.

Reg. v. Cheyt Singh, & another, 22 S. W. R. Cr. R. 70.

Where parties required, on the 1st July, to show cause on the 9th under section 491, Code of Criminal Procedure (Act X of 1872) why they should not furnish security for breach of the peace, were served on the 5th and 7th idem, it was held, that they had not had sufficient time allowed them for the purpose, and the order requiring security was accordingly set aside. A Magistrate is bound to assist both parties in a

case under section 491, Code of Criminal Procedure, in bringing in their witnesses by issuing summonses to attend.

Rajah Run Bahadoor Sing v. Ranee Tilessuree Koer, 22 S. W. R. Cr. R. 79.

It is only evidence of specific conduct on the part of the accused from which the reasonable and immediate inference is, that they are likely to commit a breach of the peace, which will justify a Magistrate in adjudicating under section 491 of the Code of Criminal Procedure (Act X of 1872).

Where a Magistrate, instead of proceeding upon evidence judicially taken before him sufficient to show that the accused were contemplating acts which would amount to a breach of the peace, acted upon his extra-judicial knowledge, the High Court set aside his order under section 491, Code of Criminal Procedure, requiring the accused to furnish recognizance.

Bindessuree Pershad & others v. Gujadhur Pershad, 23 S. W. R. Cr. R. 1.

Where a person who had been required to give a bond to keep the peace in the form E. to Schedule 2 of the Code of Criminal Procedure (Act X of 1872), instead of giving such bond, signed a security-bond in the form G under section 509 of that Code for good behaviour, it was held that the latter did not constitute a binding obligation.

Chulan Tewari v. Sukedad Khan & others, 23 S. W. R. Cr. R. 9.

Under the sections 491, 496, and 497 of the Criminal Procedure Code (Act X of 1872) relating to security for breach of the peace, the party charged is not entitled, when sufficient time has already been given him to show cause and produce his witnesses, to an adjournment in order to produce his witnesses. In such a case, he must either bring his witnesses with him or apply for summons in such time as to enable him to bring them into Court on the day fixed.

Reg. v. Hurnath Guho Thakurta, 24 S. W. R. Cr. R. 52.

Proceedings under the Code of Criminal Procedure (Act X of 1872) Chapter XXXVII having been commenced in a case it was referred to an Assistant Magistrate, who after taking some evidence, discovered that he had no jurisdiction, and returned the case to the Magistrate of the district. The latter, after calling upon the parties to show cause, bound them over to keep the peace without himself taking evidence of likelihood of any breach of the peace. Held, that the Magistrate's proceedings were wholly irregular, and that he ought to have commenced *de novo*.

Bykuntram Shaha Roy & others in re, 10 B. L. R. F. B. 434.

A Magistrate has power, under section 62 of Act XXV of 1861 (1) to prohibit a particular landholder from holding a *hát* on a particular spot on a particular day, at least for a temporary period, if he is satisfied upon reasonable grounds that the order is likely to prevent or tends to prevent, riot or an affray.

Juggut Chunder Chuckerbutty in re, 2 I. L. R. Calc. 110.

In a case of apprehended breach of the peace, the Magistrate bound over the parties in sums of money aggregating on the whole to Rs. 60,000 or upwards. The High Court quashed the order, holding that it was altogether unreasonable.

Mailamdi Fakir v. Taripulla Pramanik, 8 I. L. R. Calc. 644.

An order directing an accused "to be imprisoned until he gives security," is bad; a definite period for such imprisonment, not exceeding one year, should be stated in the order.

Umda Khanum & others in re, 3 C. L. R. 72.

A Magistrate is not competent to require persons to give security to keep the peace until he has adjudicated on evidence taken in their presence, that they have by their conduct rendered this necessary. Rajah Run Bahadoor Singh *v.* Ranee Tilessuree Kooer (22 S. W. R. Cr. 79) cited and followed.

Sheo Surn Lall, petitioner in re, 3 C. L. R. 280.

The petitioner, a tehsildar, applied to the police for assistance to protect him while distraining the crops of certain ryots for arrears of rent. On this being reported to the Magistrate, he required the petitioner to furnish security to keep the peace on the ground that any riot which might result from resistance of the ryots to the attachment of their crops would be attributable to his act. This order was set aside by the High Court as illegal, because the Magistrate had not found that the petitioner himself was likely to commit a breach of the peace.

Buroda Kant Roy v. Karimuddi Moonshee & others, 4 C. L. R. 452.

Notwithstanding the introduction into the section of the words "the accused person" and "conviction," the provisions of section 328 of the Criminal Procedure Code (Act X of 1872) apply to an enquiry instituted under section 491 with a view to enforcing the giving of security against a breach of the peace, and in such a case where the Magistrate, by whom only part of the evidence has been taken, is succeeded by another Magistrate while such enquiry is pending, the person called upon to show cause why he should not give security, may insist, before the latter, upon the recall and re-examination of the witnesses whose evidence has been already taken by the former Magistrate.

Empress v. Dhuniram, 5 C. L. R. 366.

An order postponing proceedings instituted under section 491 of the Code of Criminal Procedure (Act X of 1872) until the person called upon to show cause shall have established in a civil suit the title claimed by him to the property disputed, with reference to which there is a likelihood of a breach of the peace, amounts to a discharge.

Nobokishore Chuckerbutty in re, 7 C. L. R. 291.

In the absence of evidence that an order under 530 of the Criminal Procedure Code (Act X of 1872) was in fact directed to the accused, he cannot legally be convicted under section 188 of the Indian Penal Code for disobeying such order.

Quære :—Whether an order under section 530 can be directed to others than the unsuccessful party to the proceedings under the section; or whether such an order could properly be directed to the public at large.

Empress v. Raghubar & others, 2 I. L. R. All. 351.

The words in section 489 of the Criminal Procedure Code (Act X of 1872) "taking other unlawful measures with the evident intention of committing a breach of the peace" do not include the offence of intimidation by threatening to bring false charges. Where therefore a person was convicted under sections 503 and 506 of the Indian Penal Code of such offence, held that the Magistrate by whom such person was convicted could not, under section 489 of the Criminal Procedure Code, require him to give a personal recognizance for keeping the peace.

Empress v. Muhammed Jafir & others, 3 I. L. R. All 545.

Certain persons were convicted by a Magistrate of the first class of assault, an offence punishable under section 352 of the Indian Penal Code. The case was brought to the knowledge of the High Court by the complainant preferring a petition to it, together with a copy of the Magistrate's order. This petition was laid before STRAIGHT, J. who, observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace, as provided by section 489 of Act X of 1872, directed the Magistrate to summon such persons to show cause why they should not be required, under section 491 of that Act, to enter into a bond to keep the peace. The Magistrate accordingly summoned such persons as directed, the summonses setting forth that they were issued "under the orders of the High Court." The Magistrate took evidence on behalf of such persons, and eventually made an order requiring such persons to enter into a bond to keep the peace. Such persons were fully aware of the order made by STRAIGHT, J. :—Such persons applied to the High Court to set aside the order requiring them to enter into a bond to keep the peace, on the ground that the Magistrate had not proceeded of his own motion, but under the order of STRAIGHT, J. which was made without jurisdiction, and on the ground that the summonses had not set forth the report or information on which they were issued.

Held by STUART, C. J. that, in as much as STRAIGHT, J. when he made his order, represented the full authority and jurisdiction of the Court, such order was final, and the application could not be entertained.

Held by PEARSON, J. SPANKIE, J. and OLDFIELD, J. (SPANKIE, J. doubting whether such order could be questioned) that the order of STRAIGHT, J. was one which he was competent to make as a Court of Revision under section 297 of Act X of 1872.

Held by PEARSON J. and SPANKIE, J. that, in as much as such persons had not been in the slightest degree prejudiced by the defect in the summonses which were issued to them, such defect was not a ground on which to set aside the Magistrate's order requiring them to enter into a bond to keep the peace.

Reg. v. Nijabut Hossein & others, 1 N. W. P. Rep. All. 304.

Summons under section 282 of Procedure Code (Act XXV of 1861), should set forth the substance of the information. It should also call upon the parties summoned to show cause.

Reg. v. Nirunjun Singh & others, 2 N. W. P. Rep. All. 431.

In proceedings against persons to show cause why they should not enter into bonds to keep the peace, it is incumbent on the Magistrate to adjudicate judicially on evidence given before him as to the necessity for taking such security, and in such cases the *onus* of proof lies upon the party on whose complaint the summons was issued.

Reg. v. Nuseerooddeen & others, 2 N. W. P. Rep. All. 461.

A Magistrate is not competent, under section 282 of the Criminal Procedure Code, (Act XXV of 1861) to order persons to enter into bonds to keep the peace merely upon the statement of the complainant on which the summons was granted, and without taking further evidence, or giving the parties an opportunity of cross-examing the complainant.

Reg. v. Kunhiya & Mungro, 4 N. W. P. Rep. All. 154.

An order directing a person convicted of an offence to find security to keep the peace should be simultaneous with the conviction, and should not provide for an engagement to be executed at a future period.

Section 280 of the Code of Criminal Procedure (Act XXV of 1861) does not refer to offences affecting the human body, but to cases of riot, simple assault, or other breach of the peace, being an offence against public tranquillity.

Reg. v. Niaz Ali, 5 N. W. P. Rep. All. 80.

A Magistrate cannot bind a person over to keep the peace, without adjudicating on evidence before him.

Reg. v. Powell & others, 3 N. W. P. Rep. All. 96.

Although it is competent to a Magistrate upon conviction and sentence for assault to order the accused to enter into an engagement to keep the peace, yet having omitted to do so, he can afterwards only institute proceedings under section 281 of the Criminal Procedure Code (Act XXV of 1861) upon receiving some further credible information (other than that which he derived from the previous trial), that the parties are likely to commit a breach of the peace.

It it is essential to the validity of a summons issued under section 281 that it should contain the substance of the information by which the Magistrate is moved to act.

A separate summons should be issued to each person required to furnish security, and a separate bond taken from each, which should be in the form required by the Code, and in the order the Magistrate should state the period for which the person against whom the order is made is to be imprisoned if he fail to comply with it.

Reg. v. Kidar Nath, 7 N. W. P. Rep. All. 233.

A Magistrate cannot bind over a person to keep the peace where there is no evidence to show that such person was likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace.

Reg. v. Bachu & another, 7 N. W. P. Rep. All. 328.

It is in the power of a Magistrate, on conviction of a person of voluntarily causing hurt, to take security from him under section 489 of Act X of 1872. An order under that section requiring security should not direct that the person convicted should execute the engagement to keep the peace at the end of the term of imprisonment to which he may have been sentenced. The person convicted is at liberty to execute the engagement at once or any time during the term.

Reg. v. Ghisa & others, 7 N. W. P. Rep. All. 375.

Where certain persons were bound over to keep the peace, and were subsequently convicted of voluntarily causing grievous hurt, and at the time of conviction the Magistrate made an order estreating their recognizances, as part of his judgment in the case, without in any way fulfilling the provisions of section 502 of Act X of 1872, and the convictions were quashed by the Court of Session, the High Court cancelled the order of forfeiture.

Ananthacharri & others v. Ananthacharri & others, 2 I. L. R. Mad. 169.

A first-class Deputy Magistrate decided that a bond for keeping the peace had been forfeited, and proceeding under section 502 of the Criminal Procedure Code (Act X of 1872) levied the penalty. An appeal was entertained from this order by the Sessions Judge of South Arcot and the order was reversed. A petition was then presented under section 294 of the Criminal Procedure Code, praying the High Court to reverse the order of the Sessions Judge. Held, that the order of the first class Deputy Magistrate was not open to appeal. The effect of the penultimate clause of section 502 considered.

Reg. v. Kadar Khan, 5 I. L. R. Mad. 380.

A witness for the defence in a case of rioting having admitted being present at or near the scene of the riot, and denied that the accused took any part in it, the Magistrate, after finding the accused guilty and, without further proceedings, called upon both the accused and his witness to enter into bonds to keep the peace for one year. Held, that this procedure was illegal so far as the witness was concerned.

Proceedings of 8th March 1869, 4 Mad. Rep. Rul. 38.

When there is evidence which would justify the finding of a Magistrate that an act likely to cause a breach of the peace had been committed, the High Court will not interfere with the proceedings of the Magistrate.

Sellam, Appellant, 6 Mad. Rep. 25.

The prisoner was convicted of an offence punishable under section 307 of the Penal Code. In addition to the sentence passed upon him under that section, the Session Judge directed, under section 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of Rs. 100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period. The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement.

Reg. v. Irapa bin Basapa et al. 8 Bom. Rep. Crown Cases, 162.

The report of a Subordinate Magistrate, although it is credible information on which a Magistrate of the district would be justified, under section 280 of the Code of Criminal Procedure, in issuing a summons, is not evidence on which he can properly arrive at a conclusion that the accused is likely to cause a breach of the peace. Sections 287 and 288 of the Code (Act XXV of 1861) require that evidence in such a case shall be recorded, and if none is forthcoming security to keep the peace should not be demanded.

Empress v. Kamtaprasad, 4 I. L. R. All. 212.

The Magistrate of a district, when exercising the powers of an Appellate Court, is competent to make an order under section 489 of the Criminal Procedure Code (Act X of 1872) requiring the appellant to furnish security for keeping the peace.

Kassim Biswas & others, petitioners in re, 10 C. L. R. 335.

Where a Magistrate bound down 26 persons to keep the peace under section 491 of the Criminal Procedure Code (Act X of 1872) after recording evidence as to 11 of them only, the order was set aside as to the persons not affected by the evidence.

Charoo Chundra Mullick, petitioner in re, 10 C. L. R. 430.

A summons setting out that the person to whom it is directed is charged with an offence under section 491 of the Criminal Procedure Code, (Act X of 1872) and requiring his personal attendance in Court is not such a summons as is required by that section. A non-resident zemindar cannot be bound over to keep the peace because his local agents are committing acts likely to cause a breach of the peace.

Proceedings of 19th May, 1874. Weir, 407.

When the accused is acquitted of the offences enumerated in section 489, it is not competent to the Court to call upon him to give security.

Proceedings of 29th August, 1876. Weir, 407.

The act of which information is given, and in respect of which security is required, must be an act which is shown to be in contemplation at the time of the information given, and not merely one, a repetition of which may be expected or apprehended from past misconduct of the kind without anything further.

Proceedings of 17th March, 1863. Weir, 411.

Separate proceedings should be taken against each person ordered to find security, unless it is clear that there is such a connection between the parties as indicates the necessity of a contrary course.

Luchmee Dass v. Crowdy, 23 S. W. R. Cr. R. 19.

Where a complaint of breach of the peace under section 491 of the Criminal Procedure Code (Act X of 1872) made in April last, was transferred on account of a question of jurisdiction from one Deputy Magistrate to another without final orders being passed, the High Court (in January 1875), not being able to find that any breach of the peace

had been committed by any one, considered that it would not be proper to make an order on a complaint preferred so long ago, and directed the dismissal of the complaint made in April last.

SUMMONS.

Woozeer Singh Soobadar v. Chairman of Howrah Municipality, 24 S. W. R. Cr. R. 55.

Where a party summoned by the Municipality did not know the date upon which he was considered to have committed the offence with which he was charged until he was under trial. Held, that opportunity should have been given him to adduce any witnesses he might wish to call.

Bhoobuneshwar Dutt in re, 3 I. L. R. Calc. 621; S. C. 2 C. L. R. 80.

A refusal to give a receipt for a summons is not an offence under section 173 of the Indian Penal Code. (Reg. *v.* Kalya bin Fakir (5 Bom. H. C. R. Cr. 34) followed.

Ramchurn & another in re, 3 N. W. P. Rep. All. 272.

If a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law vests him with a discretion it is incumbent on him to exercise. At the same time the Magistrate should always take the examination of the complainant.

Proceedings of 15th July 1870, 5th Mad. Rep. Rul. 28.

Madras Act III of 1869 confers no authority upon Revenue officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue.

Proceedings of 22nd Dec. 1870, 6 Mad. Rep. Rul. 10.

The accused was convicted upon a charge that he, being summoned as a defendant in a case of trespass, left the Court without permission and thereby disobeyed the summons. The Sub-Magistrate gave the accused a verbal order to appear when required, but the Magistrate did not adjourn the case to any particular day. Held, that the conviction was bad.

Proceedings of 21st Aug. 1872, 7 Mad. Rep. Rul. 10.

Madras Act III of 1869 does not authorise a tahsildar to issue a summons to any person to appear before any other person than himself.

Proceedings of 30th Nov. 1874, 7 Mad. Rep. Rul. 43.

Where defendant was summoned to appear before a Magistrate on a certain date, but the summons did not specify the place of appearance. Held, that the Magistrate ought not to have passed an *ex parte* order in defendant's absence, as there was no failure to appear because no place was specified at which the petitioner was to appear.

Reg. v. Karsanlal Danatram, 5 Bom. Rep. Crown Cases, 20.

The mere showing to a witness of a summons issued under section 186 of the Criminal Procedure Code (Act XXV of 1861) is not sufficient service. Either the original should be left with the witness, or should be exhibited to him, and a copy of it delivered or tendered.

Reg. v. Kalya bin Fakir, 5 Bom. Rep. Crown Cases, 34.

Refusing to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself, under section 173 of the Indian Penal Code.

Huronath Roy, petitioner, S. W. R. 1864, Cr. R. 33.

A complainant's deposition must show some grounds for proceeding, before a Magistrate can legally issue a summons.

Rujeeb Mundle v. Luchmun Mundle & others, S. W. R. 1864, Cr. R. 37.

The Deputy Magistrate was held to have been wrong in summoning the parties charged before examining the complainant.

Proceedings of 21st April, 1866. Weir, 33.

Legal distinction between a summons and warrant.

Absconding to avoid a warrant not punishable under section 172.

Arumuga Nadan accused. Weir, 37.

The act of throwing down a summons which has actually been served on the accused, does not amount to a prevention of service within the meaning of the section.

Punamalai Nadan & others. Weir, 38.

The refusal to receive a summons tendered does not amount to a prevention of service within the meaning of the section (173, Indian Penal Code), service by tender being good service in virtue of section 154 of the Code of Criminal Procedure.

Proceedings of 4th May, 1865. Weir, 38.

Disobedience to a summons issued by a Village Magistrate is not punishable under the section (174, Indian Penal Code) if the Village Magistrate had no jurisdiction over the offence of which the prisoners were accused.

Proceedings of 14th August, 1872. Weir, 43.

To make a summons returnable on a Sunday is not illegal.

Proceedings of 24th Octr., 1879. Weir, 45.

To support a conviction under this section (174, Indian Penal Code) of disobedience to a summons issued under Madras Act III of 1869, it is sufficient that the person summoned is one whose evidence is deemed to be necessary for the investigation of a matter in which any of the authorities indicated "are authorized to hold an enquiry."

Madras Act III of 1869 does not authorize the issue of a summons to attend for the purpose of a purely departmental enquiry.

Proceedings of 13th April, 1880. Weir, 580.

Madras Act III of 1869 does not authorize the issue of a summons to attend before a Revenue officer for merely administrative purposes, such as (1) receiving instructions regarding census operations, (2) the preparation of irrigation Registers.

Proceedings of 23rd Octr., 1880. Weir, 580.

A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when, the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and, if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned. Where a summons did not mention the place at which, or the time of the day when, the attendance of the person summoned, was required, held that such person could not lawfully be punished under section 174 of the Penal Code for non-attendance in obedience to such summons.

Empress v. Ram Saran & others, 5 I. L. R. All. 7.

TITLE.

It is at all times desirable that questions of title should not be tried in Criminal Courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which, at the best, but an imperfect record is preserved.

Reg. v. Kishen Pershad, 2 N. W. P. Rep. All. 202.

A prosecutor, in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable ground for asserting the title, and that accused asserted the title dishonestly or fraudulently in the sense in which those terms are used in the Indian Penal Code.

TRIAL.

Under section 372 of the Code of Criminal Procedure (Act XXV of 1861) an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was re-called after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial.

Reg v. Assanoollah, 13 S. W. R. Cr. R. 15.

Reg. v. Kishen Dyal Aheer & others, 6 S. W. R. Cr. R. 7.

Every trial must be complete in itself. In deciding on the guilt of a prisoner, the proceedings in other trials ought not to be relied on.

Reg. v. Hargobind Datta Sirkar & others, 8 B. L. R. App. 12.

A Magistrate, while travelling in his district, tried a case partly at a place called Oluhati, where he took the statements of the accused persons to certain charges. This took place on the 24th June 1871. He then fixed Sunday next at noon for the further trial of the case, to be held in another village called Nundail. On the Sunday the witnesses for the defence came to the place named, but at 3 P. M. instead of noon. The Magistrate, after waiting an hour beyond the time fixed, moved on to the next village in his district. The Magistrate then sentenced the defaulting witnesses for their absence at the appointed hour under section 174 of the Penal Code to one month's simple imprisonment. The Sessions Judge sent up the proceedings to the High Court under section 434 of the Criminal Procedure Code (Act XXV of 1861) on the ground that three errors of law had been committed by the Magistrate :—

1st. In fixing Sunday as the day for hearing; 2nd, in assuming the delay, only three hours, to be intentional, and 3rd, in retaining the case on his own file, because section 171 of the Criminal Procedure Code renders it obligatory for a Magistrate to transfer a case under section 174 of the Penal Code to another officer for trial. The judgment of the Court was delivered by JACKSON, J :—" We are far from satisfied with the proceedings of the Magistrate in this case. He admits that he ought not to have tried the charge but to have transferred it to another Court. His sentences are unnecessarily severe. He was very wrong to fix Sunday for the trial of the case. It is a recognized holiday, and the witnesses might, on that account, have refused to attend. That, however, was not their defence. The fact that none attended at the appointed time gives the appearance of intentional absence. But, on the other hand, they may not have known that the Magistrate would move away, and their delay of two or three hours may have been accidental. This system of trying cases by Magistrates, while moving about from day to day, must be very harassing to all parties. It is not necessary to pass further orders in the case as the sentences have expired."

Ahlad Monee Dossee, 6 S. W. R. Cr. R. 75.

Where an accused person denies the truth of the complaint made against him, the Magistrate ought, under section 266, Code of Criminal Procedure (Act XXV of 1861) to hear the complainant and his witnesses in support of the complainant, and also the accused and his witnesses.

Goonath Mundle v. Troylucko Chuckerbutty & others, 9 S. W. R. Cr. R. 15.

A Deputy Magistrate has no authority to acquit a prisoner of an offence under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) for which he had not regularly put him upon his trial. He must proceed agreeably to section 250 of that Code.

Bagdee Manjee v. Mohindro Narain & others, 10 S. W. R. Cr. R. 16; S. C. 1 B. L. R. 7.

In a case under Chapter XV of the Code of Criminal Procedure (Act XXV of 1861), it is expected that parties will bring their own witnesses with them. If they require the attendance of any witness, they should apply to the Magistrate to cause his attendance; and where they do not apply it is sufficient if the Magistrate record in his judgment the substance of the defendant's answer.

The words "accused person" in section 436, do not apply to a party who has been convicted by the Magistrate under section 411 (Penal Code) and from whose sentence there is no appeal.

Kopilnath Sahi v. Koneeram & others, 14 S. W. R. Cr. R. 3.

Where a case which has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. The High Court, however, declined to interfere in a case of this sort, as the prisoners did not appeal or raise any objection to the trial on this ground.

Reg. v. Abheem Parrida & others, 20 S. W. R. Cr. R. 17.

In a case tried under the summary procedure authorized by section 222 of the Code of Criminal Procedure (Act X of 1872) it must clearly appear on the face of the conviction that the case was dealt with as one of those which come under the purview of that section. If the case be one of theft, it should appear what the value of the property alleged to have been stolen, really was.

Reg. v. Gunsha Munda & others, 20 S. W. R. Cr. R. 38.

It is the duty of the Government pleader or other officer who conducts the prosecution before the Court of Session to point out to the Court any glaring discrepancy between the evidence being given by a witness before the Court of Session and that previously recorded by the committing officer.

Reg. v. Parbut Sheikh, 20 S. W. R. Cr. 51.

Act XVIII of 1862, section 17 does not apply to a trial before a Sessions Judge, but only to trials on the original side of the High Court. The want of any charge of an attempt to commit rape is a defect which is cured by section 283 of the Code of Criminal Procedure (Act X of 1872).

Reg. v. Gopi Noshyo & others, 21 S. W. R. Cr. R. 47.

In a case of several prisoners who were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however, postponed giving judgment, and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners: Held, that the conviction was not valid, and the trial had not been completed. The High Court accordingly set aside the conviction, and ordered the retrial of the prisoners upon the charges upon which they were committed for trial.

Reg. v. Johrie Sing, 22 S. W. R. Cr. R. 28.

In summary cases under Chapter XVIII of the Code of Criminal Procedure (Act X of 1872) the formalities provided by that Chapter should be most strictly observed.

Chunder Shekhur Thakoor v. Nitaloo & another, 22 S. W. R. Cr. R. 29.

The powers conferred upon Magistrates under the XVIIIth Chapter of the Code of Criminal Procedure (Act X of 1872) were not intended to give them the power of altering a charge brought against an accused person, so as to bring his case within the provisions of that chapter; but when a charge of a serious offence, one which the Magistrate is not competent to enquire into summarily, is preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit or commit for trial the person implicated. Procedure under Chapter XVIII is to be followed when a charge is plainly and directly one of those specified in section 222.

Reg. v. Mohun Banfor, 22 S. W. R Cr. R. 38.

A prisoner whose trial is supplemental to that of others is entitled to as full and complete an investigation of all the facts of the occurrences upon which the charge depends as if no previous trial of other persons for participation in these occurrences had ever taken place.

Reg. v. Buzleh Ali, 22 S. W. R. Cr. R. 65.

In a case in which the accused was charged with theft of a box containing Rs. 50 in cash and of the box worth 8 annas 6 pie, the Magistrate considered the box to be of no value and struck out the 8 annas 6 pie, and thereupon tried the case summarily under section 222 of the Code of Criminal Procedure (Act X of 1872). Held, that the Magistrate was not at liberty, upon his own authority and without taking evidence, to throw the box entirely out of consideration, as upon that depended his jurisdiction to dispose of the case summarily; such evidence should have been taken precisely in the same way as evidence upon the merits of the case, and as it was not taken the Court held that the Magistrate had no jurisdiction in this case.

Reg. v. Banee Madhub Doss & others, 23 S. W. R. Cr. R. 3.

The accused in this case were convicted by the Magistrate summarily of offences under sections 352 and 341, Penal Code, although it was contended on their behalf that, if guilty, they ought to have been convicted under section 353, in respect of which a summary trial could not be held. The Sessions Judge, on the Magistrate's own judgment, recommended that the convictions should be set aside on the grounds (1) that the facts showed that the accused should have been convicted under section 353 or under section 342 and (2) that the Magistrate had no power to convict of the lesser offence, and so give himself jurisdiction to try the case summarily. Held, in concurrence with the Sessions Judge, that the accused ought to have been tried under section 353: the Magistrate's summary proceedings were accordingly set aside, and a fresh trial directed.

Emaral Sheikh v. Mohammadi Sheikh, 24 S. W. R. Cr. R. 48.

It is not in the power of the Magistrate when a person is charged before him with a grave offence to reduce the accusation of his own mere will to such dimensions as will make it triable summarily: the trial must be according to the nature of the charge.

Reg. v. Khan Mahomed & another, 24 S. W. R. Cr. R. 53.

The provisions of Act X of 1872, section 328 only apply when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has and exercises jurisdiction in such case. So section 329 only applies to "inquiries" under Chapter XV and only when the Magistrate is "unable" to complete the inquiry himself. But when a case under trial is removed under section 47, the whole proceeding must commence *de novo* in the manner provided for by section 45.

Hurikishore Malo v. Bharoti Jelyani, 24 S. W. R. Cr. R. 61.

Cases under Act X of 1872, section 536 are not in the nature of summary trials, but require the usual procedure laid down for summons cases, and that the evidence be recorded in full as required by section 335.

Reg. v. Doma Ram, 24 S. W. R. Cr. R. 66.

Where the procedure is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision.

Ramchunder Chatterjee v. Kanye Laha & another, 25 S. W. R. Cr. R. 19.

Whether a case is triable summarily or not, must be determined by the complaint, not by an estimate formed by the Magistrate (*e. g.*, of the worth of the property which the accused is charged with having stolen) after evidence has been recorded: and such estimate cannot retrospectively warrant a mode of trial which was originally illegal.

Reg. v. Golam Arabee, 25 S. W. R. Cr. R 20.

Acts or omissions punishable under Act V of 1861, section 29 come within the category of "offences punishable under any law other than the Indian Code" (Code of Criminal Procedure, section 8) and those offences likewise fall within the terms of section 148 of the same Code.

Issur Chunder Mundle & others in re 25 S. W. R. Cr. R. 65.

A summary trial under section 227, Criminal Procedure Code (Act X of 1872) being intended to apply only to short and simple cases, where little evidence is needed. Held, that the proceedings of a Magistrate thereunder, covering more than 130 pages and occupying 7 days, were an abuse of the law. Held, also, that a *bonâ fide* claim of title deprives a Magistrate of jurisdiction to deal with a criminal charge in a summary way.

Empress v. Abdool Karim, 4 I. L. R. Calc. 18.

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed.

Therefore, a Magistrate, where he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and thereby inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal. (Empress *v.* Golam Mahomed.)

Hossein Buksh & others v. The Empress, 6 I. L. R. Calc. 96; S. C. 6 C. L. R. 521.

Members of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same jury. The Court then took the evidence of the witnesses for the defence in the first, and in the counter-case in the order named, and after hearing the address of the various pleaders for the defence and the reply of the Government Pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused. Held, that the procedure resorted to by the Judge was a practical violation of the salutary rule which necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interests of the accused, the convictions should be set aside. Reg. *v.* Sheik Bazu (1 B. L. R. Sup. Vol. 750; S. C. 8 S. W. R. Cr. R. 47) distinguished.

Held, further, that the defect in the procedure could not be cured by the consent of the pleaders for the defence to the arrangement suggested by the Court.

Ameruddin v. Farid Sirkar & another, 8 I. L. R. Calc. 481.

Where persons are charged with rioting and also with causing hurt, although they may be tried as for one offence under section 454 of the Criminal Procedure Code it is not illegal to try them for both offences separately.

Empress v. Sreenath Kur, 8 I. L. R. Calc. 450.

The prisoner was committed for trial on fifty-five charges under sections 167, 466 and 471 of the Penal Code. At the trial before the District Judge sitting with assessors, the Court informed the prisoner that the trial would be confined to the three charges last mentioned. The prisoner was convicted on these, but the Court allowed evidence to be adduced by the prosecution on all the remaining charges, and in respect of these the prisoner was acquitted. On appeal to the High Court,—Held, that the District Judge should have exercised the powers conferred on him by sections 445 and 446 of the Code of Criminal Procedure (Act X of 1872), and then have proceeded to hold separate trials; that he should not have tried together the charges under sections 167 and 466 of the Penal Code, as the offences were not of the same kind within the meaning of section 453 of the Code of Criminal Procedure; but the convictions on these charges were upheld, as it did not appear that the prisoner had been prejudiced by the mode of trial adopted.

Empress v. Uttom Koondoo & another, 8 I. L R. Calc. 634.

A prisoner cannot be tried at the same trial for receiving or retaining (section 411, Penal Code), and habitually receiving or dealing in (section 413) stolen property. The proper course is to try the accused first for the offences under section 411, and if he is convicted, to try him under section 413, putting in evidence the previous convictions under section 411, and proving the finding of the rest of the property in respect of which no separate charge under section 411 could be made or tried by reason of the provisions of section 453 of the Criminal Procedure Code (Act X of 1872).

Chunder Seekor Sookul & others in re & Dhurmnath Tewaree, 1 C. L. R. 434.

Where, on the facts found by a Magistrate, an offence is established which he cannot try summarily, he is not competent to convict for an offence made up of only some of those facts in order to give himself jurisdiction. Such proceedings are void under section 34, Clause 4 of the Code of Criminal Procedure (Act X of 1872) because he was not empowered by law to try the offender summarily.

Jamsheer Sirdar & others, 1 C. L. R. 62.

A Sessions Judge, holding a second trial, should not comment on the conduct of a previous trial.

Beputoollah v. Najun Sheikh & others, 2 C. L. R. 374.

It is the nature of a complaint which should determine whether a case should be tried summarily under section 222 of the Code of Criminal Procedure (Act X of 1872). Where the acts complained of amount to an offence which a Magistrate cannot try summarily, he is not competent to hold a summary trial. In the matter of Dwarkanath Mojoomdar, 21 S. W. R. 89 and Chunder Seekor Thakoor (22 S. W. R. 29) followed.

When a Magistrate has referred a case for police investigation and the police arrest certain persons and send in evidence against them, he is bound to consider that evidence before he discharges them.

Kewul Singh & Sulabut Khan, prisoners, 1 N. W. P. Rep. All. 306.

Where a case was referred to a Deputy Magistrate for inquiry only, that inquiry cannot be regarded as a trial. Where a Deputy Magistrate is competent to try a case, it is doubtful whether it is in accordance with the spirit of section 272 of the Procedure Code (Act XXV of 1861) for the Magistrate to refer it to him for inquiry only.

Sinclair, E. D. in re, 6 N. W. P. Rep. All. 177.

Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday.

Pulisanki Reddi & others v. The Queen, 5 I. L. R. Mad 20.

Trial of 14 persons together charged with distinct offences (committing public nuisance) under sections 290, 291 of the Indian Penal Code: Held, an irregularity calculated to prejudice the accused. Convictions quashed.

Srinivasachari v. The Queen, 6 I. L. R. Mad. 336.

S. was tried by a Sessions Court in December 1882 on charges, some of which were triable by assessors, others by jury. Before the trial was concluded, the Code of Criminal Procedure 1882 came into force. By section 269 of that Act, all such charges are to be tried by jury. By section 558 of the same Act, the provisions of that Act are to be applied, as far as may be, to all cases pending in any Criminal Court on the 1st January 1883. Held, that, by virtue of section 6 of the General Clauses Act, 1868 the trial must be conducted under the rules of procedure in force at the commencement of the trial.

Subramanya Ayyar v. The Queen, 6 I. L. R. Mad. 396.

Where a head constable of police of many years service was charged with criminal intimidation with a view to prevent a person from giving evidence against serious offenders, and the District Magistrate tried the case summarily under the special power given by section 222 (10) of the Code of Criminal Procedure, 1872: Held, that the case ought not to have been tried summarily.

Reg. v. Hanmanta & others, 1 I. L. R. Bom. 610.

The accused were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of gratifications to, and by public servants in 1874-75; and finally, the fabrication and abetment of fabrication of false evidence in 1876. One of the accused was convicted on two heads of the charge, and the rest acquitted. The convict appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads as well as against the acquittal of the rest. Held, that the trial was irregular under section 452 of the Code of Criminal Procedure (Act X of 1872), and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that this course did not prejudice the accused persons who had been fully and fairly tried for those offences.

Proceedings of 7th Feb., 1878. Weir, 310.

Where a Sessions Court on appeal, acting under section 284, annulled a conviction and directed a commitment for trial to the Court of Session, it was held that no preliminary investigation before commitment was required.

Proceedings of 19th August, 1880. Weir, 314.

The ruling in High Court Proceeding, 5th November 1873, followed and explained.

Proceedings of 9th March, 1869. 4 Mad. Rep. Rul. 39.

In a trial before a Session Judge with assessors when the prisoner pleads not guilty, and the Public Prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty.

Until the finding is recorded the trial is incomplete. If before the finding is recorded, the presiding officer of a Court is removed, the successor cannot pass judgment upon consideration of the evidence recorded by the predecessor.

Proceedings of 7th April, 1869. 4 Mad. Rep. Rul. 43.

A Judge should not refuse to try a prisoner brought up in chains to stand his trial, but the Judge may direct the removal of the fetters unless satisfied by a representation from the proper officer that they are necessary.

Proceedings of 24th Aug, 1869. 4 Mad. Rep. Rul 69.

In a trial conducted with the aid of assessors the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction.

Reg. v. Kala Karsan et al., 6 Bom Rep. Crown Cases, 55.

Where, at the close of the trial, one of the assessors was discovered to be so deaf and blind as to be incapable of understanding the proceedings, the trial was held to be null and void.

Proceedings of 22nd July, 1869. Weir, 300.

A confessional statement made at the close of a trial is not a plea of guilty upon which the Judge can record a finding without taking the verdict of the jury. After a prisoner has once claimed to be tried, all the evidence including the prisoner's admission must be laid before them.

Proceedings of 12th Nov., 1866. Weir, 301.

It is open to the Judge to go into the evidence and leave the case to the jury despite a plea of guilty, but if he determines to convict on the plea, there is no question for the jury.

Proceedings of 20th Dec., 1866. Weir, 302.

Examination of accused person before committing Magistrate, when to be read and marked at Sessions trial.

Proceedings of 31st March, 1869. Weir, 303.

Where several accused were tried in one trial, the offence of each being separate and there being no common offence in which all joined, it was held that the joint trial was irregular, but that as the accused had not been prejudiced, the conviction would not be interfered with.

Devi Setti Kondiah & others, accused. Weir, 385.

Where two prisoners were charged with distinct offences in the same indictment, the calling of evidence on behalf of one does not give the Crown a right of reply upon the other.

Reg. v. Shaik Abbas & another, 2 Hyde's Rep. 247.

Semble:—If two prisoners are indicted jointly for the same offence, and one call witnesses, the Counsel for the prosecution is entitled to a general reply. But if the offences are separate, and they might have been separately indicted, he must in his reply confine himself to the case of the party who has called witnesses.

Reg. v. Hayes & others, 2 Moody & Robinson's Rep. 155.

In the trial of warrant-cases the accused may, after the charge is drawn up and the witnesses for the defence have been examined, recall and cross-examine the witnesses for the prosecution.

Talluri Venkayya v. The Queen, 4 I. L. R. Mad. 130.

VAKALATNÁMÁ.

Prisoners and others are to have the fullest opportunity for giving Vakalatnámás to whomsoever they please.

Shek Dada Bhai valad Shek Muhammad, 1 Bom. Rep. 16.

VAKEELS.

The practice of admitting private Vakils to defend parties in Criminal Courts is not illegal. It is discretionary with the Magistrate to hear such agents or not.

Proceedings of 11th Nov. 1874, 7 Mad. Rep. Rul. 37.

An Appellate Court proceeding under section 278 or 280 (Act X of 1872) has no power to refuse to hear an authorized agent. Section 186 applies to enquiries and trials when the accused is present, and the discretion given by it is not repealed in section 278.

Proceedings of 13th March 1880. Weir, 308.

An omission to hear an authorized agent is a material error of procedure within the meaning of section 297, Criminal Procedure Code.

WARRANT OF ARREST.

Warrant issued under section 68, Act XXV of 1861 which is a warrant of arrest as described under section 76 (Form B.), is only for the purpose of bringing an accused person before the Magistrate. It is not a warrant for commitment, and does not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further there must be a fresh warrant under section 222, charging the prisoner with some offence, on evidence

Reg. v. Poorna Chunder Banerjee, 4 B. L. R. Ap. 1; S. C. 13 S. W. R. Cr. R. 1.

taken on oath or affirmation, and in the presence of the accused. Section 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness, when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness.

(In the matter of Moheschunder Banerjee. Reg. *v.* Kali Sirkar).

Reg. v. Surendra Nath Roy, 5 B. L. R. 274; S. C. 13 S. W. R. Cr. R. 27.

Section 68 of the Criminal Procedure Code (Act XXV of 1861) applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute; and even in such cases the jurisdiction to arrest requires, for its foundation, knowledge of the fact of an offence having been committed, and that knowledge must be either personal or derived from testimony legally given. The report of the police, or any statement which falls short of an actual formal complaint, or of a statement made on oath, is not sufficient in law to give a Magistrate jurisdiction to issue his warrant.

Under section 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of competent police officers, and unless the urgency is imminent.

The force of a warrant of arrest is at an end when the prisoner, is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds; and in the absence of evidence, there can be no grounds.

In this case, although the Magistrate had acted illegally before evidence was recorded, and had shown a want of discretion in some of the stages, the High Court refused to quash the Magistrate's order directing the prisoners to be put on their defence, on the ground that the order had been made by a competent officer after hearing evidence which was judicially received and recorded.

Reg. v. Syud Hossein Ali Chowdhry, 8 S. W. R. Cr. R. 74.

It is essential to the legality of a search-warrant, under section 114 of the Code of Criminal Procedure (Act XXV of 1861) that production of some specified and particular thing is desired; that the Magistrate shall alone determine that such production is necessary; and that a specified house or place only is to be searched. The warrant must, under section 115 of that Code, be directed to some other person only when a police officer is not forthcoming. When the accused has been arrested, the evidence of a witness for the prosecution ought, under section 194 of the Code of Criminal Procedure, to be taken in the presence of the accused.

Banka Bihari Ghose in re, 2 B. L. R. Ap. Cr. 17; C. S. 11 S. W. R. Cr. R. 26.

A. the lessee of a toll was in arrears to Government in respect of the rent. The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (A.) for the offence of not paying the sum of Rs. 262 for arrears of rent, and A. was summoned to appear before the Magistrate to answer

the charge. A. did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day, the Magistrate passed the following order: "Whereas the debtor, defendant has not appeared in person, the summons has been disobeyed; therefore it is ordered that a warrant be issued for the arrest of the defendant." Proceedings were afterwards taken upon the warrant. Held, that all the proceedings taken by the Magistrate were irregular and must be set aside.

Srimuti Bidhumukhi Debi & others, 6 B. L. R. Ap. 129; S. C. 15 S. W. R. Cr. R. 4.

A warrant which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed.

Bissessur Chatterjee petitioner, 16 S. W. R. Cr. R. 1.

A Magistrate or Municipal Commissioner has no power under Act III of 1864, Bengal Council, to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge under section 27 of that enactment for using premises as a straw or wood depôt without a license.

Per Lock, J. :—The provisions of Chapter XV of the Code of Criminal Procedure (Act XXV of 1861) are not applicable to offences under Act III of 1864, B. C.

Sideshury Chowdhrain & others, petitioners, 16 S. W. R. Cr. R. 50.

Section 68 of the Code of Criminal Procedure (Act XXV of 1861) gives a Magistrate jurisdiction on proper evidence to issue a warrant for the arrest of persons in a pending case.

Reg. v. Amir Khan & others, 9 B. L. R. 36.

The Governor-General in issuing a warrant of commitment under Regulation III of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person, placed under personal restraint, had been guilty of some specific offence. The proceeding is not in the nature of a conviction of the person placed under restraint, therefore the person so placed under restraint cannot, in any future proceeding taken against him, plead that he has been already tried, convicted and punished.

Reg. v. Narain & another, 7 N. W. P. Rep. All. 209.

Where the officer in charge of a police station required the officer in charge of another police station to cause a search to be made in a house within the limits of his station, and such officer, on being required, deputed two officers subordinate to him to make the search without delivering to them the order in writing required by section 379 of Act X of 1872, it was held that the persons resisting the search attempted could not be lawfully convicted under sections 353 and 143 of the Indian Penal Code.

Reg. v. Locha Kala, 1 I. L. R. Bom. 340.

It is not essential to the validity of a warrant issued under section 157 of Act X of 1872 that the Magistrate, issuing it, should be, at the time he issues it, within the local limits of his jurisdiction. He may issue such a warrant from a place in foreign territory.

Reg. v. Vyankatrav Shrinivas, 7 Bom. Rep. Crown Cases, 50.

An officer, subordinate to an officer in charge of a police station, who was deputed by the latter to make an inquiry under section 135 of the Code of Criminal Procedure, (Act XXV of 1861) attempted without a search-warrant to enter a house in search of property alleged to have been stolen, and was obstructed and resisted: Held, (applying section 99 of the Indian Penal Code) that, even though the police officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceedings as a justification of his obstruction as it was not shown that that officer was acting otherwise than in good faith and without malice.

WARRANT CASE.

Reg. v. Kassy Singh, 21 S. W. R. Cr. R. 61.

It is not irregular in a warrant case for a Deputy Magistrate to take the evidence of the complainant and certain witnesses on behalf of the prosecution in the absence of the accused. All that the accused has a right to expect after the charge has been framed is, that the complainant and witnesses who had been examined in his presence before the charge was framed, should be recalled for the purposes of cross-examination. It is entirely within the discretion of a Magistrate conducting a trial in a warrant case, to admit evidence on behalf of either side at any stage of the trial, section 192, Act X of 1872 applying to such a case; but the Magistrate, in exercising the discretion conferred on him by this section, ought to have good reason for allowing witnesses on the part of the prosecution to be interposed in the midst of the case of the accused.

Talluri Venkayya v. The Queen, 4 I. L. R. Mad. 130.

In the trial of warrant cases the accused may, after the charge is drawn up and the witnesses for the defence have been examined, recall and cross-examine the witnesses for the prosecution.

WITHDRAWAL OF CASE.

Divendronath Shanial in re, 8 I. L. R. Calc. 851.

The provisions of section 47 of the Code of Criminal Procedure, Act X of 1872, as amended by section 6 of Act XI of 1874, are wide enough to empower a District Magistrate to withdraw a case falling under section 491 of the same Code.

Issur Chunder Nath v. Kali Churn Nath & another, 8 I. L. R. Calc. 883.

Where a Magistrate, in a proceeding under section 521 of the Code of Criminal Procedure (Act X of 1872) satisfies himself that there is no necessity for proceeding further under that section, he is competent to let the matter drop.

In re Shonai Paramanick (1 C. L. R. 486) followed.

Government Prosecutor v. Ameeroodeen & others, 1 N. W. P. Rep. All. 307.

When a Magistrate under section 256 of the Criminal Procedure Code (Act XXV of 1861) stops proceedings under Chapter XIV and proceeds under Chapter XII of the Code, it is not necessary for him to make an inquiry *de novo* under Chapter XII, the amended charges on which the commitment is made not being so materially different from those on which proceedings were commenced as to prejudice the accused.

Reg. v. Gumbheer, 2 N. W. P. Rep. All. 234.

The power given to Magistrates to permit complainants to withdraw their complaints is confined to cases falling for disposal under Chapter XV of the Criminal Procedure Code (Act XXV of 1861). Consequently, a charge of adultery cannot be withdrawn by a complainant with the Magistrate's consent.

Proceedings of 10th Sept. 1881. Weir, 244.

The powers of Government Pleaders who have not been appointed Public Prosecutors under section 57 to withdraw prosecutions are limited to the circumstances described in section 459 Criminal Procedure Code.

Ramakishna Nadan & others, accused. Weir, 245.

The power of withdrawing prosecutions under section 61 is given only to Public Prosecutors appointed by Government under the provisions of section 57 of the Code.

A person specially appointed by the Magistrate to conduct a prosecution under section 202 (2nd Clause) of the Code (Act X of 1872) has therefore no power to withdraw a prosecution.

WITNESSES.

Reg. v. Abdool Setar, 3 S. W. R. Cr. R. 35.

An accused person is entitled to have the witnesses named in his defence examined.

Reg. v. Afazoodeen, S. W. R. 1864, Cr. R. 13.

It matters not how often the same offence is the subject of a Sessions trial, every accused person has a right to have the whole of the evidence given and recorded in his presence just as if the witness had never before given his testimony on the charge.

Reg. v. Ashruff Sheikh & others, 6 S. W. R. Cr. R. 91.

Where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants.

Reg. v. Behary Lall Bose, 7 S. W. R. Cr. R. 44.

There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence being afterwards admitted as a witness for the prosecution.

Reg. v. Bhoobuneshur Gossamy, 2 S. W. R. Cr. R. 6.

A prisoner on trial is entitled to have his witnesses examined.

Reg. v. Bhugnur Putwa & others, 11 S. W. R. Cr. R. 9.

When a prisoner makes a distinct defence, and calls witnesses to prove it, instead of dismissing the witnesses at once on their saying they know nothing in the prisoner's favour, a Judge should put a few questions to them in detail to see if there is any truth in the prisoner's statement or any part of it.

Reg. v. Bindabun Bowree & others, 5 S. W. R. Cr. R. 54.

A Judge should compare the statements of the witnesses recorded by the Magistrate at the preliminary investigation, with the evidence of the same witnesses at the Sessions.

Reg. v. Bishonath Paul, 3 B. L. R. A. Cr. 20; S. C. 12 S. W. R. Cr. 3.

When the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it as a true record of the facts, —Held, that the proceeding was irregular and prejudicial to the prisoner; that such witnesses should have been subjected to a fresh oral examination; and that then the former depositions might have been put in, not to add to their testimony, but to corroborate it. A new trial was ordered.

Reg. v. Boidnath Sing & others, 3 S. W. R. Cr. R. 29.

Section 375 of the Criminal Procedure Code (Act XXV of 1861) lays down that, if accused parties will not name their witnesses when directed to do so by the Magistrate, they are not entitled of right to have them summoned at the Sessions trial.

Reg. v. Burjo Barrick, 5 S. W. R. Cr. R. 70.

It is the duty of a Judge to bring to the notice of assessors discrepancies and contradictory statements made by witnesses.

Reg. v. Jumdem Singh & others, 12 S. W. R. Cr. R. 73.

Where it was not shown that there were any witnesses forthcoming for examination, other than those whom the Sessions Judge did examine, the Court refused, with reference to section 363, Code of Criminal Procedure (Act XXV of 1861) to interfere with the Sessions Judge's proceedings.

Reg. v. Hossein Sirdar, 13 S. W. R. Cr. R. 17.

A witness may be examined either on oath or solemn affirmation, but he cannot be both sworn and put on solemn affirmation at the same time. The memorandum required by section 199 of the Code of Criminal Procedure (Act XXV of 1861), should always be appended to the depositions.

Reg. v. Kalee Thakoor, 5 S. W. R. Cr. R. 65.

Conviction quashed, the prisoner's witnesses not having been summoned.

Reg. v. Mahima Chundra Chuckerbutty, 4 B. L. R. Ap. 77; S. C. 12 S. W. R. Cr. R. 77.

Conviction set aside on the ground of the Magistrate's irregularity in refusing, in a trial before him, under Chapter XV of the Criminal Procedure Code, (Act XXV of 1861) to allow the examination of a witness who had been tendered on behalf of the accused.

Reg. v. Meer Zakir Ally, 8 S. W. R. Cr. R. 4.

In the case of a charge of an offence triable by the Court of Sessions alone, the Magistrate is bound, under section 186 of the Criminal Procedure Code (Act XXV of 1861) to summon the complainant's witnesses.

Reg. v. Mookun, 12 S. W. R. Cr. R. 22.

Under section 372 of the Code of Criminal Procedure (Act XXV of 1861) the accused should be asked, at the end of the case for the prosecution to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence.

Reg. v. Mukta Sing, 4 B. L. R. A. Cr. 15; S. C. 13 S. W. R. Cr. R. 60.

A Judge is a competent witness, and can give evidence in a case being tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or percuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence, of which his own forms a part.

Reg. v. Parbutty Churn Chuckerbutty, 14 S. W. R. Cr. R. 13.

Before depositions of witnesses taken before a Magistrate can be used in appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses.

Reg. v. Phool Chund & Sheosurrun, 8 S. W. R. Cr. R. 11.

Evidence of a prisoner's previous convictions and bad character and of the bad character of his relations is inadmissible. If a person is before the Court as a witness his evidence must be recorded as the law directs; if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement.

Reg. v. Pitamber Sirdar & others, 7 S. W. R. Cr. R. 25.

The moment a witness commences giving evidence which is inadmissible, *e. g.*, hearsay evidence, he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone.

Reg. v. Rajcoomar Mookerjee, 16 S. W. R. Cr. R. 14.

Where a prisoner, under section 227, Code of Criminal Procedure (Act XXV of 1861) gives in a list of the witnesses he wishes to summon, after his case has been committed, the Magistrate is bound to exercise his discretion upon the point, and to state whether he will summon the witnesses or not, and he ought to state his reasons for not doing so. If he thinks the witnesses were included in the list for the purpose of delay, he should proceed under section 228 of the Code.

Reg. v. Ramchunder Sirkar, 13 S. W. R. Cr. R. 18.

A witness when under *examination-in-chief* before the Court of Sessions should not have his attention directed to his deposition before the Magistrate. He may under section 23, Act II of 1855 (see now section 145 of the Indian Evidence Act, I of 1872) be *cross-examined* as to previous statements made by him in writing, when his attention may be drawn to the parts of the former writing which are to be used for the purpose of contradicting him.

Reg. v. Ramtohul Singh, 5 S. W. R. Cr. R. 65.

A witness who is not a Mahomedan or Hindu ought to be sworn, and not examined under the provisions of Act V of 1840 (repealed by Act X of 1873 the Indian Oaths Act).

Reg. v. Rasookoollah, 12 S. W. R. Cr. R. 51.

The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *primâ facie* proof of the fact, and may be laid before a jury.

Reg. v. Rhedoynath Biswas, 2 S. W. R. Cr. R. 45.

Where a recusant witness does not make his appearance, the Magistrate may sell any part of the attached property and recover the amount of fine imposed on him. The fine is not illegal by reason of the witness's answers to the charge not having been recorded.

Reg. v. Ramdoyal Dass, 3 S. W. R. Cr. R. 46.

The attendance of Hindu ladies of respectability and secluded habits as witnesses should not be required where no case is actually before the Court.

Reg. v. Suroopchunder Paul & another, 12 S. W. R. Cr. R. 75.

The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witnesses for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given, by a witness called for another of the parties accused, he must call him as his own witness.

Reg. v. Sutherland, Reg. v. Narain Singh, 14 S. W. R. Cr. R. 20.

A Magistrate cannot issue a warrant of arrest against a witness under section 260 of the Code of Criminal Procedure (Act XXV of 1861) unless he is first satisfied that the witness has disobeyed a summons which was served on him. In order to make a person summoned as a witness liable under section 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart.

A Magistrate is not justified by section 206 of the Code of Criminal Procedure in taking a person, without any previous notice or summons, from among the audience or attendant witnesses in open Court, and placing him in the dock to be immediately tried upon a charge which has already been commenced to be entertained against other prisoners, and on which evidence has already been given.

That section applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with.

Reg. v. Totaram, 11 S. W. R. Cr. R. 15.

Where the accused has not his witnesses in attendance, and does not apply to the Magistrate to summon them, sections 352 and 353, Code of Criminal Procedure (Act XXV of 1861), the omission of the Magistrate to require him to produce his witnesses does not prejudice the accused, or amount to an error or defect calling for interference within section 426 of the Code of Criminal Procedure.

Reg. v. Ishan Dutt & others, 6 B. L. R. App. 88; S. C. 15 S. W. R. Cr. R. 34.

This was a criminal appeal from an order passed by the Sessions Judge of Bheerbhoom, dated 2nd December 1870. This case was remanded to the Sessions Judge with directions to insist upon the attendance of a witness (Saudamini Naptini). This woman was named before the Magistrate by the prisoners as a witness for their defence in the Sessions Court. A summons was issued, but it appeared from the return that she refused to accept service and absconded. On this return the Magistrate passed a formal order "that it be kept with the record" and no further steps appear to have been taken by him to enforce the attendance of this witness. At the trial before the Sessions Court the prisoners through their pleader demanded as a right to have this witness summoned, held by KEMP, J. that they were entitled to do so under section 375 of the Code of Criminal Procedure, and that the case could not be disposed of satisfactorily without her evidence being taken. The next point taken by the pleader for the prisoners was, that the Judge was wrong in not having permitted the pleader for the prisoners to cross-examine the witness Kedarnath Mitter, Sub-Assistant Surgeon of Rampore Haut as to the result of any conversation he might have had with his patient. Held, by KEMP J. that if a witness called by one of the parties is a competent witness, the opposite party has, in strictness, a right to cross-examine him, though the party calling him has declined to ask a single question, and that, as the witness Kedarnath Mitter was a competent witness, and as he

was called by the prosecution, although he was questioned by the prosecution only as to such matters as came within his professional knowledge and referred only to his professional examination of the wounds inflicted, and to their treatment, the Judge ought to have allowed the pleader for the prisoners to cross-examine that witness without making him a witness for the defence.

See Ramdhun Mandul *v.* Rajballab Paramanick, 6 B. L. R. App. 10.

Ram Sahai Chowdhry *v.* Sanker Bahadur, 6 B. L. R. App. 65.

In the matter of the petition of Mahima Chandra Shah, 6 B. L. R. App. 78.

Ramdhan Mandal & another v. Rajballub Paramanick & others 6 B. L. R. App. 10.

It is not right for the lower Court to select five out of twenty witnesses tendered for examination. It is the bounden duty of the Judge to receive all the evidence tendered, unless the object of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case, or otherwise to obstruct the ends of justice.

Bhika Roy in re, 7 B. L. R. 568 foot notes; 10 S. W. R. Cr. R. 36.

The complainant Dhotan Roy, lodged a complaint to the effect, that, while he was engaged in reaping the crops of his holding in Mauza Ladhowna, the accused and others interfered, assaulted him, and carried away his crops. The case was referred for decision by the Magistrate of the district to the Deputy Magistrate, Moulvie Wajhalla Khan, who summoned the accused persons. The petitioner, one of the persons accused, appeared. The Deputy Magistrate, after examining the complainant and the accused, and taking the evidence of the complainant's witnesses, sentenced the petitioner to pay a fine of Rs. 5 under section 143 of the Indian Penal Code; or, in default of payment, to suffer five days' rigorous imprisonment; Rs. 25, under section 379 of the said Code, or in default of payment, to suffer fifteen days' rigorous imprisonment; and Rs. 20 under section 352 of the aforesaid Code, or, in default of payment, to suffer ten days' rigorous imprisonment. The Judge of Bhaugulpore referred the case to the High Court, recommending that the conviction be quashed on the ground of the illegality in not calling upon the accused to produce his witnesses under section 252, Code of Criminal Procedure (Act XXV of 1861). He also called the attention of the High Court to the order of the lower Court, which on three separate charges, was framed so as not to exceed 50 rupees' fine, or one month's imprisonment.

The judgment of the Court was delivered by LOCK, J.:—"The case appears to be one which comes under the provisions of Chapter XV of the Code of Criminal Procedure, in which a summons on complaint ordinarily issues. Section 252 does not apply to cases which fall under Chapter XV, but section 266, which requires the Magistrate, should the accused deny the charge, to hear the complainant and his witnesses, and also to hear the accused person and such witnesses as he shall produce in his defence. The form of summons attached to the Code does not require a party charged to bring his witnesses with him; but the terms of section 266, read with section 262, apparently suppose that the defendant's witnesses attend voluntarily and accompany the accused. We do not think there is any cause for the interference of the Court."

Luckhim Molloo v. Gooroo Doss Mookerjee, 5 S. W. R. Cr. R. 51.

Where the default of complainant's witnesses was caused by the Deputy Magistrate shifting his Court to a place different from that named in the summons. Held, that it was irregular to throw out the case without giving them a second opportunity of appearing.

Moheschunder Banerjee in re, Reg. v. Kali Sirkar, 13 S. W. R. Cr. R. 1; S. C. 4 B. L. R. Ap. 1.

Section 207 (Act XXV of 1861) gives no power to the Magistrate to call up and examine witnesses for the defence whose names have been given in a list under section 227, when the prisoners reserve their defence for the Court of Session; but under section 228, he is bound to summon them to give evidence before the Court of Session. The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a prosecutor, observed upon.

Ram Shahai Chowdhry v. Sunkur Bahadur, 6 B. L. R. Ap. 65; S. C. 15 S. W. R. 7.

Refusal to summon witnesses cited by an accused, on the ground of their being implicated in the charge, vitiates the trial and conviction.

Mohima Chunder Shah in re, 6 B. L. R. Ap. 78; S. C. 15 S. W. R. Cr. R. 15.

It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence (see Ram Shahai Chowdhry *v.* Sankur Bahadur, 6 B. L. R. App. 65).

Abdoor Ruhman, petitioner, 7 S. W. R. Cr. R. 37.

A Magistrate is not bound, under section 191 of the Code of Criminal Procedure (Act XXV of 1861), to enforce the attendance of witnesses by warrant, except upon proof of due service of summons.

Boiddonauth Bania v. Bheedoo Dass, 9 S. W. R. Cr R. 3.

Section 186 of the Code of Criminal Procedure (Act XXV of 1861) refers to cases under Chapter XII, which are triable by the Court of Sessions, and not to cases, under Chapter XV, which are triable by a Magistrate.

Akbar Tagudeer v. Punchoo Biswas & another, 10 S. W. R. Cr. R. 42.

In a case of forcibly rescuing cattle under section 14, Act III of 1857, in which the accused did not summon any witnesses, it was held that even if the accused wanted them summoned, the Magistrate under section 262 of the Code of Criminal Procedure (Act XXV of 1861), need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily.

Ameer Chand Nohatta, petitioner, 13 S. W. R. Cr. R. 63.

A Magistrate is bound under section 266 of the Code of Criminal Procedure (Act XXV of 1861) to examine all the witnesses whom an accused person may produce for his defence. Held, by BAYLEY, J. (MARKBY, J. *dubitante*) that a Magistrate has a discretion under section 262 of the Code of Criminal Procedure to summon a witness when he is likely to give material evidenee on behalf of the accused.

Chedee Koonjra & others, Case of, 14 S. W. R. Cr. R. 76.

In a case under Chapter XV, Code of Criminal Procedure (Act XXV of 1861) it is incumbent on the accused either to produce their witnesses or to apply beforehand for a summons to enforce the attendance of any witness who is not likely to appear without a summons; nor is it necessary in such cases to record the examination of the accused with the same formalities as in cases under Chapters XII and XIV.

Boolakee & others, Case of, 14 S. W. R. Cr. R. 81.

In a case of an offence (such as hurt under section 328, Penal Code) punishable with imprisonment exceeding six months, and therefore falling under Chapter XIV of the Code of Criminal Procedure (Act XXV of 1861) a Magistrate is bound to summon all the witnesses required by the accused.

Notobur Bera, Case of, 15 S. W. R. Cr. R. 87.

A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date. Instead of doing that, he produced only 2 witnesses, who were examined. Held, that as the complainant did not apply to the Magistrate to issue summonses on the other witnesses or ask him to proceed under section 262, Code of Criminal Procedure (Act XXV of 1861), the Magistrate was not wrong in law in deciding the case on the evidence which was before him.

Jehan Buksh, petitioner, 15 S. W. R. Cr. R. 87.

In a case in which the accused person cited a number of witnesses, and the evidence already before the Magistrate was contradictory, it was held that the Magistrate should have summoned and examined the witnesses whom the accused wanted to call.

Dinoo Roy & others, Case of, 16 S. W. R. Cr. R. 21.

In a trial held under Chapter XV of the Criminal Procedure Code (Act XXV of 1861), it is not an irregularity to adjourn the trial under section 269 for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial.

Thakoor Dyal Sen in re, 17 S. W. R. Cr. R. 51.

A Magistrate cannot refuse to allow witnesses whom he allowed to be cross-examined by the accused previous to the preparation of a charge, to be re-called and cross-examined after the accused has been put upon his defence under section 252 of the Code of Criminal Procedure (Act XXV of 1861), treating them as witnesses for the prosecution.

Reg. v. Rajnarain Mytee, 18 S. W. R. Cr. R. 20.

Where the omission of a Magistrate, in committing a prisoner, to enter on the record the names of certain persons who had been named as witnesses for the defence at the Sessions, was brought to the notice of the Judge, and an order was made by the Judge, requiring the witnesses to be served, but the witnesses did not appear, and the Judge tried the prisoner in their absence, and refused an adjournment in order to their production, the High Court held that the prisoner was entitled to have the benefit of the examination of witnesses in question, and directed the Judge to examine them accordingly.

Reg. v. Tulsi Dosadh, 18 S. W. R. Cr. R. 57.

A witness ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief.

Belilios v. The Queen, 19 S. W. R. Cr. R. 53.

When the charge has been framed, and the defendant put on his defence, he has a right, under section 218 of the Criminal Procedure Code (Act X of 1872), to have the prosecutor's witnesses recalled for the purpose of cross-examination.

The claim to recall the witnesses for the prosecution is very different from the request made by the accused person to summon a witness under section 362, Act X of 1872.

No appeal lies to the Sessions Court from the order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination, but the order is such an error as cannot be immediately corrected except by the High Court under its powers of Superintendence and Revision.

Reg. v. Ameeruddeen Fakeer, 21 S. W. R. Cr. R. 29.

Under section 218 of the Code of Criminal Procedure (Act X of 1872), a Magistrate is not competent to refuse to recall the witnesses for the prosecution to be cross-examined by the accused, and it is not necessary for the accused to show that he has reasonable grounds for his application.

Reg. v. Bocha Chowkidar, 22 S. W. R. Cr. R. 33.

Under section 327, Code of Criminal Procedure (Act X of 1872), the witnesses for the prosecution should be examined in the presence of the accused, when practicable, notwithstanding that their statements have been previously recorded in his absence.

Khurruckdhareee Sing v. Pershadee Mundul, 22 S. W. R. Cr. R. 44.

As a rule, the proper and convenient time for the purpose of cross-examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to re-call and cross-examine the witnesses for the prosecution at any period of the defence, when the Court may think such a step right and proper. It is incumbent upon a Court, when it discharges a witness from the duty of attendance before the trial is ended, to ascertain from the

accused whether he has, or is likely to have, any need of the witness's testimony; and if he has such need, then to take such steps for ensuring the presence of the witness at the required time as may be necessary.

Jeldhari Singh & another v. Shunkur Doyal & others, 23 S. W. R. Cr. R. 9.

It is not incumbent on the Magistrate to summon every person named as a witness by the complainant. Section 215, Explanation 3 of the Criminal Procedure Code, (Act X of 1872) must be read with section 362 which vests a discretionary power in the Magistrate.

Reg. v. Prosunno Coomar Moitro, 23 S. W. R. Cr. R. 56.

Under section 363, Code of Criminal Procedure (Act X of 1872) a prisoner is entitled as a matter of right to have any witnesses named in the list which he delivers to the Magistrate, summoned and examined.

Gobind Suain v. Narain Raoot, 24 S. W. R. Cr. R. 18.

A Magistrate is fully justified in believing one witness in preference to three others, if he sees reason to do so, and it is not legally necessary that he should detail his reasons.

Sreenath Mundle v. Sreeram Rajput & Russick Gope, 24 S. W. R. Cr. R. 62.

Where a Magistrate omits to examine all the complainant's witnesses before declaring the accused not guilty, the omission is a material error in a judicial proceeding, bringing the case within the purview of Act X of 1872, section 297. (See now section 253, Act X of 1882.)

Nobinchand Banerjee & another, petitioners, 25 S. W. R. Cr. 32.

In a warrant case, the accused is entitled to recall and cross-examine prosecution witnesses as expressly provided by section 218, Criminal Procedure Code (Act X of 1872); and in a case in which this right was refused by the Magistrate, and a good portion of the imprisonment ordered had been suffered, the High Court refused to order a new trial but recorded an order of acquittal.

Reg. v. Ramkishan Halwai & others, 25 S. W. R. Cr. 48.

Where certain accused persons, who were convicted of using criminal force, had not been allowed to recall and cross-examine the witnesses for the prosecution, because the trying officer believed that such witnesses could only be recalled immediately after the framing of the charge,—Held, that accused persons always had a right to recall prosecution witnesses, which ceased only when they themselves waived it; that the Magistrates could waive all inconvenience to witnesses by asking accused persons, on the drawing up of charges, whether they required the further attendance of the witnesses; and that the conviction must be set aside because the accused had not enjoyed the protection provided by the law.

Empress v. Donnelly, 2 I. L. R. Calc. 405.

Per Curiam:—A Magistrate cannot himself be a witness in a case in which he is the sole Judge of law and fact. *Per* MARKBY, J.:—Where in such a case he has given his evidence and convicted the accused, his having so acted makes the conviction bad. *Per* PRINSEP, J.:—The conviction is

not absolutely bad. It is open to the Court to uphold the conviction, if it is of opinion that, after rejecting the Magistrate's evidence, there is other evidence sufficient if believed to support the conviction. This being a proceeding under section 297 of the Criminal Procedure Code (Act X of 1872) the Court refused to go into the evidence.

Reg. v. Bholanath Sen, 2 I. L. R. Calc. 23; S. C. 25 S. W. R. Cr. R. 57.

The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, L. the officiating Superintendent of the jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned, that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's Counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and L. gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The moneys, the receipt of which were the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced L. to sign as correct, and L. had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses he intended to call in his defence, L. was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though not themselves as evidence."

The prisoner was convicted. On a motion to quash the conviction,—Held, that L. had a distinct and substantial interest which disqualified him from acting as Judge,—Held, further, that although a Magistrate is not disqualified from dealing with a case judicially merely because in his character of Magistrate it may have been his duty to initiate the proceedings; yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution. Held, further, that the recording the statements of the prisoner's witnesses was irregular.

Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad, the defect will not be cured by any waiver or consent of the prisoner.

Empress v. Rajcoomar Singh & another, 3 I. L. R. Calc. 573; S C. 2 C. L. R. 62.

A. a joint owner of a parcel of land, erected on it an edifice without the consent and against the will of B. another joint owner. A dispute having arisen in consequence, the Magistrate held an enquiry, and made an order under section 530 of the Criminal Procedure Code, (Act X of 1872) awarding to A. exclusive posses-

sion of the part of the land on which the edifice had been erected. Held, *per* JACKSON, J. :—that such order was erroneous, as the matter was not one to which section 530 could apply. B. subsequently brought a suit in the Civil Court to establish his title to joint possession of the whole parcel and for a declaration that A. was not entitled to erect any edifice thereon; and he further prayed that such edifice should be removed. B. obtained a decree, whereupon his servants went on the land and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined.

Held *per* JACKSON, J. :—that as there had been no causing of wrongful loss, the accused had not been guilty of mischief.

On the 8th October, the accused who were the servants of B. found the men in the employ of A. were putting up this erection, a *nawbut-khana*, again, and accordingly protested against its erection, pulled down the bamboos, thrust aside the servants of A., throwing to the ground one man who was clinging to the bamboos. On the 9th October 1877 these servants were charged before the Magistrate with rioting, and being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance, but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused on 12th October 1877. Held *per* JACKSON, J. :—that this being a warrant case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might at his discretion have adjourned the case. Held further *per* JACKSON, J. :—that the meaning of section 359 of the Criminal Procedure Code (Act X of 1872) is, that if among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment and enquire whether such witness is material; but that the section is not intended to enable the Magistrate to inquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused, and further, that in the present case there was not any purpose of vexation or delay; and that by the refusal to grant further time the accused had been probably prejudiced in their defence.

Empress v. Grischunder Talukdar, 5 I. L. R. Calc. 614; S. C. 5 C. L. R. 364.

A witness for the prosecution, examined by the Magistrate in the enquiry which preceded the committal of this case to the Court of Sessions was not called at the trial before the latter Court. The prosecution did not submit him for cross-examination, but at the close of the case for the defence the presiding Judge himself called and examined this witness, but refused to permit his cross-examination, on the ground that, under section 165 of the Evidence Act, no cross-examination could follow upon a question put by the Court. Held, that witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right, and *a fortiori* if such a witness is called and examined by the Court under section 165 of the Evidence Act, the prisoner should be allowed to cross-examine.

Empress v. Asgur Hossein & others, 6 I. L. R. Calc. 774; S. C. 8 C. L. R. 124.

The incapacity to give evidence mentioned in section 33 of the Evidence Act need not be a permanent incapacity. *In re* Pyari Lall (4 C. L. R. 504) dissented from.

The Magistrate to whom a complaint was made, examined certain persons on oath in the absence of the accused, merely for the purpose of ascertaining whether there was any, and what case, against the prisoners; and he did not take down in writing the statements of the persons so examined. Held, that the Magistrate was wrong in examining the witnesses on oath in the absence of the accused, for the purpose of finding out whether there was a case; but that, having done so, he was not bound to take down their statements in writing.

Empress v. Noor Bux Kazi & others 6 I. L. R. Calc. 279; S. C. 7 C. L. R. 385.

At a trial before a Sessions Court, the Judge, on the examination-in-chief of the witnesses for the prosecution being finished, questioned the witnesses at considerable length upon the points to which he must have known that the cross-examination would certainly and properly be directed. Held, that such a course of procedure was irregular, and opposed to the provisions of section 138 of the Evidence Act. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in section 138 of the Act.

Faiz Ali v. Koromdi, 7 I. L. R. Calc. 28; S. C. 8 C. L. R. 325.

Reading sections 217 and 218 of the Criminal Procedure Code (Act X of 1872) together, it appears that, if an accused person desires to recall and cross-examine the witnesses for the prosecution, the time at which he should express such desire is when the charge is read over to him and he is called upon to make his defence; and although it is in the discretion of the Magistrate to recall the witnesses at a subsequent stage of the case, the accused has no right to insist upon the witnesses being recalled.

Reg. v. Mohuree & others, 2 N. W. P. Rep. All. 393.

Section 253 of the Criminal Procedure Code (Act XXV of 1861) does not apply to cases triable under Chapter XV of that Code, and sections 262 and 263 are applicable when the offence is not punishable with more than six months' imprisonment, and it is in the discretion of the Magistrate to summon the witnesses for the defence if he considers their evidence essential to the just decision of the case, and incumbent on him to summon them only if it appears to him that they are likely to give material evidence on behalf of either party, and that they will not voluntarily appear for the purpose of being examined at the time and place appointed for the hearing of the complaint.

Reg. v. Lall Singh, 6 N. W. P. Rep. All. 270.

An accused person has, under section 218 of Act X of 1872, the right to recall and cross-examine the witnesses for the prosecution at any time while he is engaged on his defence and before his trial is concluded. He is not precluded from asserting and exercising the right,

by reason of his having cross-examined them before he was put on his defence, or by reason of his not having, *suo motu*, expressed his wish to do so at the time he was called upon to enter on his defence, and when the witnesses were in attendance in the Court and did not require to be re-summoned.

Reg. v. Lall Mahomed, 6 N. W. P. Rep. All. 284.

An accused person is not deprived of the right given him by section 218, Act X of 1872, to recall and cross-examine the witnesses for the prosecution after the charge has been drawn up against him, by reason of the witnesses having been cross-examined before the charge was framed.

A Magistrate should not of his own motion discharge the witnesses for the prosecution until the accused person has exercised or waived the right of cross-examination given by the section.

When it becomes necessary to adjourn the hearing the Magistrate should in all cases inquire of the accused if he desire to exercise his right of recalling the witnesses for the prosecution, or consents to the discharge of all or any of them. If the accused consents to their discharge, and they are discharged accordingly, he is not entitled to have them re-summoned as a matter of right.

Where it became necessary to adjourn the hearing, and the Magistrate did not call upon the accused to exercise his right under the section, and there was no sufficient proof that the accused consented to the discharge of the witnesses for the prosecution, it was held that the accused was entitled to have the witnesses, whom he desired to cross-examine at the further hearing, re-summoned.

Quære:—If the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, whether the Magistrate would thereupon be at liberty to discharge the witnesses.

Ramasami Ayyan v. Ramu Mupan, 3 Mad. Rep. 372.

Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary inquiry into a criminal charge. Held, that in a suit for a malicious prosecution the defendant had a right to the evidence of the Subordinate Magistrate, who held a preliminary inquiry into a charge of forgery preferred by the defendant against the plaintiff.

Subharaya Mudali, Appellant, 4 Mad. Rep. 81.

A prisoner who was about to be committed to the Session Court, presented to the Magistrate, a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the prisoner declined to state his reason.—Held, that the Magistrate was at liberty to decline to summon the persons named in the list, on the prisoner declining to satisfy him that they were material witnesses; but the Magistraee ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited.

The High Court called for the record for the purpose of seeing, whether any of the persons named in the list were likely to be able to give material evidence.

Proceedings of 4th Feb., 1869. 4 Mad. Rep. Rul. 29.

Section 266 of the Code of Criminal Procedure (Act XXV of 1861) only requires the Magistrate to hear such witnesses as the accused shall produce in his defence.

Proceedings of 27th Nov., 1871. 6 Mad. Rep. Rul. 42.

A Munsif ought not to be called on to depose as to what took place before him in the course of a trial which he was conducting as Munsif, and he is entitled to exemption.

Reg. v. Byha Valad Surjun & others, 1 Bom. Rep. 91.

A separate note of witness's deposition is required to be taken by section 195 of the Code of Criminal Procedure (Act XXV of 1861) which is not satisfied by a statement that a witness "deposes as last witness."

Reg. v. Narayan Sundar, 5 Bom. Rep. Crown Cases, 1.

A person apprehended by the police and brought before the Magistrate with the accused is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not *charged* along with the accused.

Reg v. Bholanath Mookerjee, 7 B. L. R. 564; S. C. 16 S. W. R. Cr. R. 28.

In a trial under Chapter XIV of the Criminal Procedure Code (Act XXV of 1861) the Magistrate is not bound, under section 253, to summon any witness whom the accused may require. It is only discretionary with him to do so, and in the circumstances of the present case he exercised his discretion rightly in refusing to summon the witnesses asked for.

Per PAUL, J. (differing). The right of an accused to have witnesses for his defence summoned during the pendency of the trial is an ordinary and natural right, and this right is not taken away but affirmed by section 253; the Magistrate is bound to summon the witnesses, though it is discretionary with him to adjourn the trial. In the present case, treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required.

Reg. v. Doorgagutty & others, 11 S. W. R. Cr. R. 55.

In a case tried under the provisions of Chapter XIV of the Code of Criminal Procedure, (Act XXV of 1861) the accused are entitled to have their witnesses summoned, and a Magistrate has no power to refuse to summon them.

Reg. v. Kanye Sheikh, S. W. R. 1864 Cr. R. 38.

Whenever a prisoner is put upon his trial he is entitled to have the witnesses examined *de novo* if they have previously given evidence on the trial of another prisoner in the same case, and it is not sufficient to require the witnesses to identify the prisoner and to read over to them their former examination and require them to attest it.

Hurrochunder Paul & others, 20 S. W. R. Cr. R. 76.

In a case in which a Deputy Magistrate took an active part in the capture of parties charged with having been members of an unlawful assembly—parties whom he himself tried on that charge—it was held that he was bound to state to the accused, so far as he could, what were the facts he himself observed and to which he himself could bear testimony: and the prisoner in such situation had a right, if he thought it desirable, to cross-examine the Judge, whose evidence should be recorded and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other Judge.

Hurro Soondery Chowdhrain in re, 4 I. L. R, Calc. 20; S. C. 3 C. L. R. 93.

A pardanashin woman summoned as a witness in a criminal case has a right to be exempted from personal attendance at Court, and to be examined on commission. (See Farid-un-nissa *in re* 5 I. L. R. All. 99.)

Deela Mahton v. Sheo Dyal Koeri, 6 I. L. R. Calc. 714; S. C. 8 C. L. R. 70.

A Magistrate is not at liberty to refuse to summon a witness tendered by an accused person, except, on the grounds specified in section 359 of the Criminal Procedure Code (Act X of 1872); and if he does refuse, he is bound to proceed under that section. The fact that the accused declines to examine a witness is no reason for refusing to summon him to meet fresh evidence given subsequent to the defence being closed.

Empress v. Dhunno Kazi & another, 8 I. L. R. Calc. 121. S. C. 10. C. L. R. 151.

It is *primâ facie* the duty of the prosecution to call all the witnesses who prove their connection with the transaction connected with the prosecution, and who must be able to give important information. If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecutor from calling such witnesses, is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn against an accused.

Per WILSON, J.....The only legitimate object of a prosecution is to secure not a conviction, but that justice be done. The prosecutor is not therefore free to choose how much evidence he will bring before the Court. He is bound to produce all the evidence in his favour directly bearing upon the charge. It is *primâ facie* his duty, accordingly, to call those witnesses who prove their connection with the transaction in question, and also must be able to give important information. The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. If such witnesses are not called without sufficient reason being shown (and the mere fact of their being summoned for the defence seems to us by no means necessarily a sufficient reason) the Court may properly draw an inference adverse to the prosecution. There is no corresponding infer-

ence against the accused. He is merely on the defensive, and owes no duty to any one but himself. He is at liberty, as to the whole or any part of the case against him, to rely on the witnesses of the case for the prosecution, or to call witnesses, or to meet the charge in any other way he chooses; and no inference unfavourable to him can properly be drawn, because he takes one course rather than another.

Empress v. Baldeo Sahai, 2 I. L. R. All. 253.

The charge having been read to the accused person he stated his defence to the same, upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses, for the defence who were not in attendance. The Magistrate then discharged the witnesses for the prosecution and adjourned the trial for the production of the witnesses for the defence. Held, *per* SPANKIE, J. that the accused was not entitled to have the witnesses for the prosecution summoned, in order that they might be cross-examined by the accused, on the date fixed for the examination of the witnesses for the defence. Held also *per* SPANKIE, J. that the Magistrate was empowered to record both oral and documentary evidence after the witnesses for the defence had been examined.

Satnarain Singh & another in re, 3 I. L. R. All. 392.

Where the Magistrate trying an offence rejected an application by the accused person that a certain person might be examined on his behalf either in Court or by Commission, without recording his reasons for refusing to summon such person, as required by section 362 of the Criminal Procedure Code, *held* that the conviction of the accused person must be set aside, and the case be re-opened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law.

Reg. v. Chotey Lal & another, 3 N. W. P Rep. All. 271.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. It is also an irregularity to prepare the charge against a prisoner after his defence has been recorded.

Proceedings of 5th July 1870, 5 Mad. Rep. Rul. 27.

Where the Subordinate Magistrate convicted certain persons without allowing them a proper opportunity for summoning and attendance of witnesses named for the defence, the High Court quashed the conviction and directed the Subordinate Magistrate to re-hear the case.

Empress v. Rukn-uddin, 4 I. L. R. All. 53.

On the 30th March 1881, an accused person on his trial before a Magistrate asked that a certain witness might be summoned on his behalf. The Magistrate ordered a summons to be issued for the attendance of such witness on the 18th April, to which day the further hearing of the case was adjourned. There was some delay in the service of the summons, and such witness did not attend on that day. The Magis-

Reg. v. Hira Jiva, 7 Bom. Rep. Crown Cases, 59.

The offence of possessing above a quarter of a Surat ser of opium not shown to have been legally obtained is exclusively cognizable by District Magistrates: Reg. *v.* Narayan vd Natha and others Criminal Reference No. 109 of 1869 overruled.

Reg. v. Lakuvalad Sakru, 8 Bom. Rep. Crown Cases, 118.

The offence of unlawfully being in possession of smuggled opium is an offence exclusively cognisable by a Magistrate of a district or of a division of a district, as representing the Zillah Magistrate referred to in Reg. XXI of 1872, section 7. No other Magistrate or Court has now jurisdiction to hold a preliminary inquiry into, or to try a person accused of, such an offence. Reg. *v.* Hira Jiva (7 Bom. Rep. Crown Cases 59) approved, and the Court's reply No. 123 of 19th August 1867, to the Khándesh Session Judge's reference No. 702 of 1867 dissented from.

Reg. v. Sadu Dada Bhai, 9 Bom. Rep. 166.

Although the effect of section 21 of the Code of Criminal Procedure (Act XXV of 1861) is to give exclusive original jurisdiction to the Magistrate of the district in the trial of cases under section 7 of Regulation XXI of 1827 for abetting the smuggling of opium, that section (21) does not exclude the appellate jurisdiction vested in the Court of Session by section 409 of the Code.

Reg. v. Narayan Gangaram & others, 9 Bom. Rep. 343.

The district Magistrate whose Court is the proper tribunal for the trial of an offence relating to the smuggling of opium has, under section 21 of the Code of Criminal Procedure (Act XXV of 1861) power to inflict any fine provided by Regulation XXI of 1827 for such offence, even though the fine may exceed Rs. 1,000. The arrest of a person accused of the above offence without a warrant is generally illegal, except under the circumstances specified in section 108 of the Code of Criminal Procedure.

Empress v. Kola Lalang & another, 10 C. L. R. 155.

Section 61 of Act VII (B. C.) of 1878, must be construed strictly. Accordingly the words "the quantities specified in section 15" in that section must be taken to contemplate the quantities actually mentioned in section 15 and not such quantities whether greater or smaller as the Board of Revenue might under any authority in it specially fix upon.

Quære:—Whether the Board of Revenue has power specially to direct that any exciseable article may be sold in greater or less quantity by wholesale or retail than is specified in section 15 of Act VII B. C. of 1878.

Baney Madhub Shaw & another, petitioners in re, 10 C. L. R. 389.

Notwithstanding the provisions of section 52 of Act VII of 1878 (B. C.) that the amount of fine in respect of a breach of licence may be realized from the master, two or more servants of a licensed vendor of spirits may, on committing a breach of the licence, be fined in the full penalty. Where a licence provided that the licencee would "produce for inspection on demand of any Excise officer above the rank of a head constable or chaprassie his licence and accounts,

&c., "it was held that an inspector of police although empowered under section 42 of Act VII (B. C.) of 1878, was not an excise officer within the meaning of that Act, and non-compliance with a demand made by such inspector for production of the licence did not render the persons who refused to produce such licence liable to a penalty.

Nomullu Akond & others in re, 11 C. L. R. 416.

The licensed vendor and not his servants is liable under section 59 of the Excise Act VII (B. C.) of 1878 for contravention of the Act.

Kyte in re, 11 C. L. R. 427; S. C. 9 I. L. R. Calc. 223.

At the request of certain licensed excise dealers in Agra, to whom liquor was consigned from Europe, A. in Calcutta paid the duty and landing charges, and was in the act of forwarding the liquor to Agra when the liquor was seized in his possession and a charge laid against him of being in the possession of exciseable liquor without a pass in contravention of section 61 of VII (B. C.) of Act 1878. A. was convicted. Held, that the conviction was bad.

Bhoobun Chunder Shaw & another in re 11 C. L. R. 464.

Contrary to the conditions of his master's opium license, the servant sold a preparation of opium between sunset and sunrise. The master was not present and there was no evidence to show that he had directly or otherwise authorised the illegal sale. Held, that the master was not liable to a penalty under section 9 of Act I of 1878.

Empress v. Eshanchunder Dey & another, 12 C. L. R. 451.

A person who is not a licensed vendor under Act VII (B. C.) of 1878, does not commit an offence by being in possession of a quantity of country spirits less than 12 quarts; although that quantity may be more than the quantity authorised by the rules of the Board of Revenue under the powers conferred on it by section 13 of the Act.

Empress *v.* Kala Lalong, I. L. R. 8 Calc. 214 (S. C.) 10 C. L. R. 155 followed.

A necessity for altering a conviction from one section to another for cognate offences when the accused has not been prejudiced by any such error is no sufficient ground for a reference to the Court of Revision.

Revision case No. 118 of 1881. Weir, 455.

The words "beyond the limits of the Madras Abkari" mean beyond the limits of the Abkari of the Town and suburbs of Madras." It is no offence against the Abkari Act to convey liqnor either within or beyond the Madras territories so long as the liquor, while within the Madras territories, is accompanied by a valid permit.

Sakiya accused. Weir, 457.

Animals &c. employed in conveying unlicensed liquor are not liable to confiscation otherwise than by the order of the Collector; but where the Collector has ordered their confiscation, the Magistrate convicting the offender

should distribute the value of such animals or articles when making an award under section 26 B.

Proceedings of 23rd Dec. 1879. Weir, 458.

Selling toddy in measures of less capacity (than prescribed in the rules framed by competent authority) is not an offence under section 20 of the Abkari Act, but the selling of liquor in measures other than the specific measures prescribed by the rules framed by competent authority, being a breach of the seller's license, is an offence punishable under section 20 of the Act.

Proceedings of 28th Jan. 1878. Weir, 459.

An order of a Magistrate directing the sale by public auction of liquor found in the possession of a person selling without license held to be illegal.

Proceedings of 11th Dec. 1871. Weir, 460.

The license to sell made out in the name of a male member of a family will protect the wife, brother, or agent of the licensee selling on his behalf.

Proceedings of 1st Oct., 1880. Weir, 460.

On a conviction of an offence under section 21, a Magistrate has power to order the forfeiture of the license.

Proceedings of 14th Sept., 1881. Weir, 461.

The manufacture of "Sonti Mandu," a material used for purposes of fermentation in the preparation of liquor, is not a manufacture of liquor and is not therefore an offence under section 21 of the Act.

Proceedings of 27th Sept., 1881. Weir, 461.

On a conviction for an offence under section 21, it is not competent to the Magistrate to adjudge the confiscation of property found in the possession of the accused which is in no way connected with the offence committed, *e. g.*, paddy.

V. Ramaiya, accused. Weir, 462.

Section 22 of the Act must be read with section 21. The latter section is an exception to the general provision in section 22. So reading them, section 21 limits the liability of persons found in possession of liquor above the permitted quantity, (*e. g.*, a vendor whose license has expired) to possession for the purpose of sale.

Proceedings of 3rd April 1880. Weir, 463.

Where 1st accused sold liquor without a license in a private house and was arrested for an offence under section 21, the Police Officer who effected the arrest having entered the house without a warrant, and the 2nd and 3rd accused who resisted the arrest were convicted of abetting an offence under the section, it was held that the convictions of the 2nd and 3rd accused were illegal because the Police officer could not enter

the house without warrant and the arrest not being lawful, resistance thereto was not unlawful; held also that the mere consumption of the liquor sold in the house was not an assisting of the dealer in selling without a license.

Proceedings of 11th Oct., 1880. Weir, 465.

Under sections 23A. and 6 of the Abkari Laws Amendment Act V of 1879, Magistrates have power, on a conviction of the offences specified in section 23A. to confiscate the liquor, implements or vessels.

Proceedings of 21st Feb. 1880. Weir, 446.

Sections 26 B. of Act V. of 1879 renders it obligatory on a Magistrate who convicts an accused person of an offence under section 22 of the Act to award in equal shares the fine and the sale proceeds of the vessels and conveyances to the officer who apprehended the offender and to the informer.

Proceedings of 7th Aug., 1879. Weir, 467.

The home manufacture of liquor, even for *bonâ fide* domestic consumption, is an offence punishable under section 21 of (Madras) Act III of 1864.

Empress v. Ishanchandra De 9 I. L. R. Calc. 847.

The servant of a licensed vendor sold eight quart bottles of country spirit, and employed a cooly to carry them as he directed. The servant was convicted under section 60 Bengal Act VII of 1878; and the cooly was convicted under section 61 of the same Act. It was suggested that the servant should have been convicted under section 53 and that the cooly had committed no offence. Held, that the conviction of the cooly was illegal, and must be set aside.

Held, also, that the servant was properly convicted, and whether under section 60 or 53 was immaterial.

Reg. *v.* Ishanchunder Shah, 19 W. R. Cr. 34); and (Empress *v.* Baney Madhub Shaw, 2 I L. R. 8 Calc. 207; 10 C. L. R. 389) followed.

The necessity for altering a conviction from one section to another for cognate offences, when the accused has not been prejudiced by any such error, is no sufficient ground for a reference to the Court of Revision.

Davis v. Koylas Chunder Ghose, 13 C. L. R. 336.

A. who held a certificate under Act VII of 1878 (the Excise Act) from the Deputy Commissioner of Police that he was entitled to a license from the Collector to sell *muddut* upon the conditions set forth therein, obtained such a license from the Collector under Act I of 1878, (the Opium Act) upon the conditions mentioned. No license was granted by the Deputy Commissioner of Police, it not being usual for licenses to be granted by the Police where a license had issued by the Collector upon a certificate from the Deputy Commissioner. A. was charged under section 40 of Act IV of 1866 (as amended by Act II (B. C.) of 1876) with a breach of the conditions, not of the license but of the certificate the act complained of having been committed by A.'s servant. Held, that the sale of *muddut* is regulated by Act I of 1878, and therefore no license from the

Commissioner of Police for the sale of *muddut* was requisite under sections 36 and 37 of Act IV of 1866. Held, further, that section 32 of Act IV of 1866, applied to the case, and that under that section a license from Deputy Commissioner of Police was necessary for the sale of *muddut* and accordingly that A. although he had obtained a certificate from the Deputy Commissioner of Police entitling him to a license under Act I of 1878 was liable to punishment by reason of his not having under section 39 of Act IV of 1866 also obtained a certificate from the Deputy Commissioner. See *in re* Bhoobun Chunder Shaw, 11 C. L. R. 464.

ACT IX OF 1868.

Proceedings of 26th July, 1863. 4 Mad. Rep. Rul. 62.

Where it is sought to recover the penalty described in section 17 of Act IX of 1868 from any person who omits to take out a certificate the Collector who issued the notice should prefer a complaint before a Magistrate, and the Collector cannot prefer the complaint before himself in his capacity of Magistrate.

ARMS ACT.

Reg. v. Nandkumar Bose, 3 B. L R. Ap. 149.

A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under section 26 of Act XXXI of 1860; and certain persons were, in consequence of his notification, arrested and brought before him charged in a police report with carrying arms without license. No summons or warrant had been applied for, nor any complaint lodged before the Magistrate, previous to the arrest of the prisoners. No charge in writing was framed as required by sections 250 and 251 of the Criminal Procedure Code (Act XXV of 1861). No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under section 188 of the Indian Penal Code, of disobedience of an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction or injury to human life, health, or safety. Held, that the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on.

Rameshur Purshad Narain Sing, petitioner, 18 S. W. R. Cr. R. 1 S. C. 9 B. L. R. App. 34.

The proceedings of a Magistrate directing the issue of a summons to appear, and of a warrant of arrest against a person for the possession of arms without a license under Act XXXI of 1860, were quashed as illegal.

Modnarain Puri, petitioner, 18 S. W. R. Cr. R. 26.

The mere possession of arms without a license in Gya, was held to be no offence under the Arms Act, XXXI of 1860, the provisions of section 32 of that Act not having been extended to that district.

Empress v. Tegha Singh, 8 I. L. R. Calc. 473.

A collection of fire-arms, consisting of four small cannons, four pistols, and thirty-one muskets, had been kept as objects of worship in a Sikh temple in Patna for upwards of two centuries. The Mohunt of the temple neglected to take out a license in respect of these arms under Act XI of 1878. A police inspector, who was appointed to see that the provisions of the latter Act were obeyed, searched the temple on information received, and, having found the arms, prosecuted the person who had charge of the temple. The latter was convicted by the Deputy Magistrate of Patna under section 19, clause (f) of Act XI of 1878, and sentenced to pay a fine of Rs. 50, or to be rigorously imprisoned for two months. The Deputy Magistrate also ordered the arms to be confiscated, and directed that their value and the fine should be divided between the informer and the Police Inspector. On a reference from the Sessions Judge of Patna, Held, with reference to Act X of 1872, section 579 and the last heading to Schedule IV of the same Act, and to section 19, cl. (f) of Act XI of 1878 that the proceedings of the Police Inspector and the conviction of the accused were not illegal. There is nothing in the Arms Act to exempt the custodians of a temple from complying with the requirements of the Arms Act, either by taking out a license or obtaining exemption under section 27. Section 25 of the Arms Act appears to refer to cases in which the Magistrate considers that arms, whether under license or not are possessed for an illegal purpose, or under circumstances such as to endanger the public peace. Section 30 of the Arms Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search.

Reg. v. Sheopershun Rae & another, 2 N. W. P. Rep. All. 57.

The mere possession of arms in a certain district being an offence, if there be satisfactory evidence that the prisoners were in the possession of arms, they would be punishable for such illegal possession, notwithstanding the police may have also committed an illegality in their procedure in conducting the search for the same.

Reg. v. Bommaya Chetti & others, 5 I. L. R. Mad. 26.

In a district where bison are notoriously in the habit of injuring crops, a license under Form XI, Rule 16, of the Indian Arms Act (1878) rules (to kill wild beasts which injure crops) justifies the holder thereof in shooting bison for the sake of sport without taking out a sporting license under Form VIII, Rule 13 of the same rules.

Reg. v. Suppi & another, 5 I. L. R. Mad. 159.

The manufacture or possession of fireworks, including rockets which are mere fireworks, without a license is not prohibited by section 5 of the Indian Arms, Act, 1878. The rockets referred to in section 4 are war-rockets.

Reg. v. Siddappa, 6 I. L. R. Mad. 60.

A gun rendered unserviceable by the loss of the trigger does not fall within the definition of "arms" in section 4 of the Indian Arms Act, 1878. Possession of such a weapon without a license is no offence.

Proceedings of 4th March, 1879. Weir, 468.

The term "manufacture" in the Arms Act, XI of 1878, cannot be construed to include "repair."

Proceedings of 4th Sept., 1879. Weir, 469.

A battle-axe is an arm within the meaning of the Act.

Suppi & Moidin Kutti, accused. Weir, 470.

The manufacture or possession of fire-works, including rockets, is not prohibited by the Arms Act.

Proceedings of 30th Aug., 1879. Weir, 470.

The offence of failing to deposit arms being an offence punishable with imprisonment for a term which may extend to 3 years is, by force of section 8 of the Code of Criminal Procedure, not cognizable by a Magistrate of the 2nd class.

Proceedings of 13th Oct., 1879. Weir, 471.

An offence under section 19 of the Arms Act is not triable summarily.

Proceedings of 31st August, 1881. Weir, 471.

Carrying a gun without ammunition in the absence of license, held to amount to an offence under section 19 (*f*), not 19 (*e*).

Revision Case, No. 72 of 1882. Weir, 472.

A conviction under section 19 (*e*) of going armed for purposes of sport, when merely licensed to go armed for the destruction of wild animals, quashed on the ground that the animals sought to be killed, were animals notoriously destructive to crops.

BREACH OF CONTRACT.

Reg. v. Gaub Gorah Cacharee & others, 8 S. W. R. Cr. R. 6.

Coolies in Assam who have received advances in contemplation of work to be done, may be proceeded against under Act XIII of 1859.

Upper Assam Tea Company v. Thopoor 4 B. L. R. App. 1.

A breach of contract to supply wood does not fall within the purview of Act XIII of 1859.

KEMP, J. :—Thopoor was under contract to supply wood to the aforesaid Company on a consideration of rupees 100 advanced to him by the Company. The contract states that he would deliver the wood in June 1869, and in that he would not fail. This is a contract, the breach of which can only be remedied by suit in the Civil Court. The provisions of Act XIII of 1859 are not applicable. That Act was passed to provide for the punishment of breaches of contract by artificers, workmen and labourers. The contractor in the present case is not an artificer, a workman, or a labourer. The order of the Assistant Commissioner is quashed.

Domestic Servants in re, 3 B. L. R. Ap. Cr. 32; S. C. 12 S. W. R. Cr. R. 26.

Act XIII of 1859 does not apply to contracts for a "chakri" domestic or personal service, but to contracts to serve as artificer, workman, or labourer.

Nowa Tewaree & another, 6 S. W. R. Cr. R. 80.

An agreement for personal service in conveying indigo from the field to the vats is not a contract, the breach of which is punishable by section 490 of the Penal Code.

Tara Doss Bhuttacharje v. Bhaloo Sheikh, 8 S. W. R. Cr. R. 69.

Act XIII of 1859 relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a labourer, but an actual balance is due to him.

Sage v. Nirunjun Chatterjee, 9 S. W. R. Cr. R. 12.

Quære :—Whether the words "during a voyage or journey" in section 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases.

Koonjobehary Lall v. Raja Doomney & Koonjobehary Lall v. Rughoonath Dome, 14 S. W. R. Cr. R. 29.

Where a labourer contracted with the manager of a silk factory for a money consideration to work at the factory for four months in a year for a period of three years, and broke the terms of his contract, he was held liable to a prosecution under Act XIII of 1859, and the order of the Magistrate holding that such a contract was an unreasonable one, and therefore one which ought not to be enforced by him, was set aside.

Lyall & Co. v. Ram Chunder Bagdee, 18 S. W. R. Cr. R. 53.

The High Court declined to exercise their extraordinary powers of revision in a case in which the Joint Magistrate dismissed a complaint of breach of contract under Act XIII of 1859 on the ground that that Act did not apply to this contract, which was a contract to work at a certain factory.

Muni Chundra v. Hariram Ahom, 8 C. L. R. 254.

A Mahout or elephant-driver does not come within the provisions of Act XIII of 1859.

Ram Prasad v. Dirgpal & others in re, 3 I. L. R. All. 744.

An employer of workmen residing and carrying on business in the city of Mirzapur, alleging that he had advanced money to certain workmen on the understanding that they would work for him and no one else until they had repaid such money, and that they had broken such contract by leaving his employment, made a complaint against such workmen under Act XIII of 1859, which had been extended to the "station" of Mirzapur by the Local Government. It appeared that such money was advanced by way of loan, and without any reference to the wages of such workmen or the payment for the work performed by them, and that no deduction on account of such advance was ever made from their wages or the payments made to them. Held, that the contract between the parties was something quite different from any contract contemplated by Act XIII of 1859, and that Act was therefore not applicable. Held, also that it was doubtful whether that Act applied locally, as it was not shown that the city of Mirzapore was comprised within the "station" of Mirzapore.

Poonen Ex parte, 1 I. L. R. Mad. 174.

A washerman is not an artizan within the meaning of Madras Act III of 1871.

Pollard v. Mothial & another, 4 I. L. R. Mad. 234.

The inquiry to be made under section 2 of Act XIII of 1859 is not an inquiry into an offence which may be tried summarily.

Srinivasa Mudali v. Ponnambalam & others, 5 I. L. R. Mad. 376.

Where an order has been made by a Magistrate under Act XIII of 1859, section 2 for the fulfilment of a labour contract, a sentence of imprisoment for disobeying such order without complaint made, and without taking statements from the accused, is illegal, although the accused, before the order was made, may have stated their inability to perform the work stipulated for.

Reg. v. Muttu Reddi & others, 6 I. L. R. Mad. 199.

Persons who habitually engage in manual labour, although they may at the same time be employers of labour, are included in the term "labouring classes," used in section 2 of Act I of 1858 (Madras).

Proceedings of 13th July 1867, 3 Mad. Rep. App. 25.

Where a contract was made by the defendant that a number of coolies should be brought by him to an estate and remain at work on the estate for a specified time and there had been a breach of the contract, Held, that the case is within section 2 of Act XIII of 1859.

Madras Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII of 1859.

Proceedings of 9th August, 1869. 4 Mad. Rep. Rul. 64.

On the construction of section 2 of Act XIII of 1859: Held, that gold or silver money given to an artificer as raw material wherewith to make the article contracted for, is an "advance of money" within the meaning of the section. Held, also, that a sentence of imprisonment should not be announced beforehand in the order directing performance of the contract, but should follow on a complaint of non-compliance.

Proceedings of 26th April, 1871. 6 Mad. Rep. Rul. 24.

A butcher contracting to supply skins is not within Act XIII of 1859.

Proceedings of 26th Nov., 1872. 7 Mad. Rep. Rul. 13.

Defendant, in consideration of an advance of money received from complainant, bound himself to work for complainant until the repayment of the sum advanced. For breach of this contract complainant proceeded against defendant under Act XIII of 1859. Held, that the contract was not within the Act.

Proceedings of 12th Dec., 1873. 7 Mad. Rep. Rul. 31.

An order of a Magistrate, passed under section 2 of Act XIII of 1859, "that the prisoner should for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him.

Reg. v. Joma bin Balu, 4 Bom. Rep. Crown Cases, 37.

A labourer agreed to serve in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service in violation of the agreement. He was prosecuted and convicted of breach of contract of service under Act XIII of 1859.

Reg. v. Jethya valad Vestya, 9 Bom. Rep. 171.

Held, that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract of service under Act XIII of 1859, and because, further, *no money in advance was received*, the consideration for the agreement to serve being an old debt.

Section 490 construed. The section does not apply to a servant hired by the month and under a continuing implied contract to serve until the engagement is terminated.

Proceedings of 27th March, 1863. Weir, 215.

A domestic servant engaged in Madras on a monthly salary who absconded after arriving at Cuddapah, was held not to have committed criminal breach of contract of service.

Proceedings of 7th January, 1868. Weir, 216.

Act XIII of 1859 has no application to cases in which the work has actually been completed at the time of complaint.

Proceedings of 29th March, 1865. Weir, 479.

A contract simply to supply coolies is not within the provisions of Act XIII of 1859.

Proceedings of 23rd Feb. 1876. Weir, 481.

The test to be applied to contracts to supply coolies which it is sought to render punishable under Act XIII of 1859, is—does the contract (to supply coolies) amount to a contract to work or to get certain work performed? Where an accused had received a sum in consideration of his promising to bring a number of coolies to an estate and failed to fulfil his contract, denying also the receipt of the money, it was held that the offence committed was neither criminal breach of contract punishable under Act XIII of 1859, nor criminal breach of trust, but cheating as defined in section 415 of the Penal Code.

Proceedings of 1th October, 1879. Weir, 482.

A return of the goods given to be worked on is not provided for in the Act directly. It is only by an order to perform the contract and enforcing the performance that the return of the goods and of the money advanced can be got.

Proceedings of 29th October, 1880. Weir, 486.

A contract made in consideration of what was ostensibly an advance, but was in reality a deposit or loan to be refunded at the close of the period of contract, is not a contract for the breach of which proceedings can be taken under Act XIII of 1859. The Act never contemplated contracts of service extending over a lengthened period.

Proceedings of 9th Jan. 1880. Weir, 488.

Act XIII of 1859 is intended to provide for breaches of contract and to inflict penalties. The matters to which these penalties are attached are offences.

Proceedings of 16th Nov. 1874. Weir, 490.

Madras Act III of 1863 is repealed (by implication) by the Court Fee's Act, sections 20 and 31.

No fee other than process-fees, at the rate prescribed by the High Court, under section 20 of the latter, Act and the fee paid on the application or examination of the accused, can now be adjudged against the defendant.

Proceedings of 14th March, 1879. Weir, 491.

In a case of conviction under section 2, Act XIII of 1859, an order for the refund of stamp duty and process-fees ought to be passed.

Proceedings of 17th March, 1879. Weir, 493.

Proceedings of 15th March, 1877. Weir, 493.

A provision in the contract document for payment of a penalty does not bar the operation of the penal enactment.

Proceedings of 13th July, 1877. Weir, 494.

Act XIII of 1859 is not applicable to contracts with cartmen.

Proceedings of 21st August, 1880. Weir, 494.

An order purporting to be made under section 3 to find bail for the repayment of the money advanced is illegal.

Pullencheri Hyder, accused. Weir, 495.

An order to repay an advance on the spot is not illegal.

Proceedings of 15th Dec., 1876. Weir, 497.

The Courts in British India have no power to take cognizance of a complaint of breach of contract to labour at a place out of the limits of British India.

Higgins, petitioner. Weir, 497.

A complaint of an offence of criminal breach of contract under Act XIII of 1859 may be tried summarily. An order made in a summary trial of an offence of criminal breach of contract adjudging the repayment of money advanced is appealable, although no penal sentence has yet been passed on a default of compliance with such order.

The contract can be enforced only against the contracting party. Third parties, even although they may have admitted a joint responsibility for the money advanced, cannot be held liable.

Proceedings of 24th Oct., 1879. Weir, 498.

A prosecution under Act XIII of 1859 will not lie against the undivided co-parcener of the person contracting in consideration of an advance, even although the latter may have undertaken to complete the work.

CATTLE TRESPASS.

Reg. v. Mathur Purshotam & another 4 Bom. Rep. Crown Cases, 13.

The latter portion of section 13 of Act III of 1857 (Trespass by cattle) having been repealed by Act XVII of 1862 :—Held, that the offences created by that section may be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure (Act XXV of 1861).

Reg. v. Lingana bin Giubana & others, 4 Bom. Rep. Crown Cases, 14.

In the case of a conviction by a Subordinate Magistrate under section 18 of Act III of 1857 (trespasses by cattle) of a person who, through neglect, permitted a public road to be damaged, by allowing his pigs to trespass thereon :—Held, on a reference by the District Magistrate, that the conviction was not illegal, because

the land damaged was a public road; as the right to use a public road is limited to the purposes for which the road is dedicated.

Proceedings of 27th Nov., 1879. Weir, 633.

A sentence of imprisonment, in default of payment of compensation adjudged under the Cattle Trespass Act (I of 1871) is illegal: no appeal will lie against such illegal sentence. The procedure to be followed in default of payment of compensation is that prescribed in section 307, Criminal Procedure Code, for the levy of fine.

CERTIFICATE UNDER ACT XXVII OF 1860.

Seetaram Sahoo v. Roy Sheo Gholam Sahoo Bahadoor, 18 S. W. R. Cr. R. 34.

A certificate under Act XXVII of 1860 only authorizes the holder thereof to collect the debts due to the estate of a deceased person, but does not entitle him to recover or to take possession of any property belonging to the deceased from any person who may be in possession. (whether wrongful or rightful) of that property The Magistrate ought to maintain the person in possession, and leave the other party to bring a suit in the Civil Court to prove his title to the property independently of the certificate.

Mussamut Anuragee Koowar v. Ramruchya Dass, 25 S. W. R. Cr. R. 16.

The grant of a certificate under Act XXVII of 1860 is not sufficient proof of possession to entitle the holder to an order under the Criminal Procedure Code.(Act X of 1872) section 530 declaring him to be in possession.

CERTIORARI.

Reg. v. Rámdas Samaldas, 12 Bom. Rep. 217.

The power of the High Court to issue a writ of *certiorari* has not been taken away by section 147 of the High Court's Criminal Procedure, Act X of 1875.

CIVIL PROCEEDINGS.

Reg. v. Sahoo & another, 11 S. W. R. Cr. R. 19

A Deputy Magistrate, who without reasonable cause delays proceedings with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVII of 1850, to an action for damages if the prisoners are eventually acquitted. By section 22 of the Code of Criminal Procedure (Act XXV of 1861) a Magistrate may, by a written order, from time to time adjourn an enquiry for a period not exceeding fifteen days.

Shamachurn Bose v. Bholanath Dutt, 6 S. W. R. Civ. Ref 9.

In a case where a party took away a cow out of another's field and wrongfully detained it pretending that he purchased it at an auction sale in execution of a decree, it was held that there was a remedy by civil action; that the plaintiff was not bound to institute a criminal proceeding in the first instance; and that the Civil Court was bound to take cognizance of it under section 1 of the Code of Civil Procedure (Act VIII of 1859).

Madhub Kyburtho v. Kesub Sing & others, 9 S. W. R. Cr. R. 22.

Civil proceedings do not constitute a bar to a prosecution in a Criminal Court.

Reg. v. Muttura-manchetti, 4 I. L. R. Mad. 325.

Where the provisions of section 258 of the Code of Civil Procedure have not been complied with, a Civil Court is not debarred from admitting evidence that the decree has been satisfied out of Court, for the purpose of an investigation with a view to sending the judgment-creditor to a Magistrate under section 643 of the Code of Civil Procedure.

Proceedings of 22nd Sept., 1879. Weir, 474.

The imprisonment which a Civil Court is authorized to award under section 359, clause 5 of the Code of Civil Procedure, may be either rigorous or simple imprisonment.

Although the misconduct of the debtor rendered punishable by the section is punishable at the instance of the creditor only, it is not the less a criminal offence,

Civil Courts, when sentencing an offender to imprisonment under the section, should specify in their warrant which must be addressed to the officer in charge of the criminal jail, whether the imprisonment adjudged is simple or rigorous.

Proceedings of 14th May, 1879. Weir, 476.

The Code of Civil Procedure does not authorize an officer of Court to enter a house by breaking the door for the purpose of arresting a judgment-debtor. The meaning of the term "illegal obstruction" discussed.

Anderson, v. McQueen, 7 S. W. R. Cr. R. 12.

A Civil Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to force and break open a door or gate.

Reg. v. Gazi Kom Aba Dore, 7 Bom. Rep. Crown Cases, 83.

If a bailiff break the doors of a third person, in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff render himself punishable under section 183 or section 186 of the Indian Penal Code.

Reg. v. Acheet Lall, 17 S. W. R. Cr. R. 46.

As a general rule, one of two parties to an impending suit ought not to put the criminal law in motion as against the other in matters connected with the suit; or if he does do so, the hearing of the criminal case ought to be postponed until the suit is concluded. But although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction.

COMPULSORY LABOUR, ACT I OF 1858.

Proceedings of 14th March, 1878. Weir, 544.

To support a conviction under section 2 of Act I of 1858, the requisition to labour must have been made by the head of the village.

Proceedings of 19th May, 1882. Weir, 545.

To empower the authorities to act under section 1, it is only necessary to see that a loss of property has occurred or will occur.

A village seven miles distant from the spot where the breach occurs is not a village "in the vicinity" within the meaning of the section.

COTTON.

Reg. v. Hanmant Gavda, 1 I. L. R. Bom. 228.

Possession of adulterated cotton, even though accompanied by a knowledge that the cotton is adulterated, is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act (Bombay Act IX of 1863). No criminality attaches to such possession till the cotton is actually offered for sale or compression.

Imperatrix v. Khimchand Narayan, 3 I. L. R. Bom. 384.

Cotton supposed to have been adulterated in foreign territory was seized in British territory. Held, that the Magistrate of the place where the cotton was seized, has jurisdiction to try the offender, as the effect of the new Cotton Frauds Act (Bombay), No. VII of 1878, sections 6 and 14, is to make the possession of "cotton liable to confiscation" punishable with fine, and it is immaterial where the adulteration takes place.

Reg. v. Ratanji Bhukan, 1 Bom. Rep. 17.

Cotton having been sold subject to examination by an inspector, the mere fact of cotton of two different qualities being found in one of the bales is not sufficient to support a charge under section 1, clause 1 of Reg. III of 1829. (Reg. III of 1829 is repealed by Act IX of 1863 (Bombay).

Reg. v. Jivan Usman & others, 3 Bom. Rep. Crown Cases, 12.

Conviction under section 2 of the Bombay Cotton Frauds' Act (No. IX of 1863) and sentences of one month's rigorous imprisonment, as well as an order for confiscation of cotton, set aside for want of evidence to show that the Deputy Magistrate who tried the case had jurisdiction in the matter over the persons convicted; and for want of evidence of fraud. As to whether, notwithstanding section 411 of the Criminal Procedure Code (Act XXV of 1861) a regular appeal lies in such case—*Quære.*

Reg v. Premji Bhagvan, 10 Bom. Rep. 295.

To constitute the offence of offering adulterated cotton for compression under section 8 of Bombay, Act IX of 1863, it is not necessary to prove that the accused had a fraudulent intention, or that he had knowledge of the cotton having been adulterated or deteriorated, or mixed as described in section 2 of that Act.

Reg. v. Chouthmal Lachhiram, 11 Bom. Rep. 144.

Gumming together two varieties of cotton which had been mixed before constitutes "mixing" within the meaning of section 2 of Bombay Act IX of 1863.

EXTRADITION.

Reg. v. Souter, 8 Bom. Rep. Crown Cases, 13.

Section 23 of Act VII of 1854 is not repealed by the Schedule to Act XVII of 1862. The treaty of the 6th of November 1817 between H. H. the Gaikvad of Baroda and the East India Company provides for the delivery upon requisition of accused persons to H. H. the Gaikvad *in a manner other than* in accordance with the provisions of the sections of Act VII of 1854 prior to the 23rd section. The latter section is, therefore, applicable in such a case.

Semble:—That Government would not be justified in delivering up an accused person to H. H. the Gaikvad without holding a preliminary inquiry into the guilt of such accused.

Where a warrant issued under section 23 of Act VII of 1854 directed the accused person to be delivered up to the Resident at Baroda, without showing either that an inquiry had been made, or was about to be made, the Court held that it was not therefore invalid, as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an inquiry as is required by the Act.

A warrant issued under section 23 of the Act should recite either that an inquiry has been held, or is about to be held, with reference to the guilt of the accused.

FERRY.

Reg. v. Deeyauntoollah, 7 S. W. R. Cr. R. 32.

Clause 2, section 13, Regulation VI of 1819 only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept, and is in a dangerous condition, he should proceed under section 4.

Reg. v. Prabhakar N. Soman, 3 Bom. Rep. Crown Cases, 11.

A conviction by a Full-power Magistrate, under section 9 of the Bombay Ferries Act, (No. XXXV of 1850) annulled for want of jurisdiction, as the "Magistrate of the Zillah," alone was empowered by section 16 summarily to hear and determine all offences against the Act.

Reg. v. Malhari bin Shivji, 3 Bom. Rep. Crown Cases, 41.

On a reference by a Session Judge, a conviction and sentence by a District Magistrate under the Bombay Ferries Act (No. XXXV of 1850) for conveying passengers for hire from Uran to Bombay was reversed; as the act charged did not constitute an offence under any section of the Act.

HABEAS CORPUS.

Reg. v. Vaughan In re Ganesh Sundari Debi, 5 B. L. R. 418.

The return to a writ of Habeas Corpus must be taken to be true, and cannot be controverted by affidavit. In England 56 George III, Cap. 100, section 4 allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of habeas corpus can, however, be amended.

Hastings in re, 9 Bom. Rep. 154.

A warrant issued under section 76 of the Code of Criminal Procedure (Act XXV of 1861) should be sealed, should describe the person to be apprehended under it with reasonable particularity so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court.

INCOME TAX ACT.

Reg. v. Cheit Ram, 2 N. W. P. Rep. All. 113.

There are strong grounds for urging that the Legislature intended that convictions under sections 24 and 25, Act IX of 1869, should be summarily disposed of by the Magistrate, but the Court is not prepared to hold that the right of appeal is taken away. No jurisdiction is given to the Judge to reverse a conviction under these sections, because he

may regard it as one of hardship, nor has he to determine whether or not the failure to pay was in pursuance of an intention to avoid payment or not. By failure to make payment within the time specified in the notice, the tax-payer is guilty of an offence within the terms of section 25, and subsequent payment does not take the case out of the provisions of that section.

To render such a conviction valid, it must be shown that the prosecution was instituted at the instance of the Collector, and the mere sending on the tehseeldar's report, with an expression of the Collector's general desire to prosecute defaulters, cannot be held tantamount to the institution of a prosecution at the instance of the Collector. The provisions of section 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted.

Reg. v. Sangapa bin Bashiappa, 7 Bom. Rep. Crown Cases, 76.

The Indian Income Tax (Act IX of 1869 supplemented by Act XXIII of 1869) having been passed subsequently to the General Clauses Act (No. I of 1868) section 5 of the latter authorises the award of imprisonment in default of payment of the fine imposed under section 25 of the former.

THE INDIAN PORTS' ACT, XII OF 1875.

Chunder Churn Mookerjee & others, appellants, 12 C. L. R. 508; S. C. 9 I. L. R. Calc. 849.

To justify a conviction under section 22 of Act XII of 1875, it must be shown that the accused, if he did not himself throw the ballast or rubbish into the Port, intentionally caused some one else to do so. A master is not liable for his servant's acts done in contravention of that section unless it can be shown that the acts were done by his authority.

LABOURERS.

Northern Assam Tea Company in re, 3 B. L. R. Ap. Cr. 39.

Held, that until an enquiry is made under section 3, Act VI of 1865 (B. C.), the Protector of Labourers is not competent to act under section 32.

That the procedure under section 31 must be conducted in accordance with section 444 of the Criminal Procedure Code Act (XXV of 1861).

That to support a conviction under section 32, Act VI of 1865 (B. C.) it must be shewn that the wages or part of the wages due have remained unpaid for more than six months. But in an account-current, the payments are not to be appropriated for the wages of the month in which the payment was made.

LICENSE (MADRAS ACT, III OF 1878).

Aiyavaiyan alias Chidambara Aiyan, accused. Weir, 546.

In the matter of determining objections under section 14 of the Act, a Collector or an officer exercising the powers of a Collector under the Act has the same power as a Civil Court to enforce the attendance of, and to examine witnesses on oath or affirmation. A false statement made during such inquiry will, therefore, render the maker of it liable to prosecution for an offence under section 193 of the Penal Code.

LICENSE.

Chairman of the Municipal Commissioners for the Suburbs of Calcutta v. Umbica Churn Mookerjee, 15 S. W. R. Cr. R. 84.

Where an accused was charged with a breach of section 77, Act III of 1864 in not taking out a license for a woodyard, and he pleaded that the yard had been in existence prior to 1864, it was held that the Magistrate was wrong in refusing to enquire into the allegation as to the existence of the yard prior to 1864.

Sriram Chunder Holdar v. The Chairman of the Howrah Municipality, 20 S. W. R Cr. R. 65.

Section 77 of Act III (B. C.) of 1864 refers to the burning of bricks for trading purposes, and not to cases where bricks are made for the particular use of the person burning them: such person need not take out a license for that purpose.

Wood v. The Corporation of the Town of Calcutta, 7 I. L. R. Calc. 322; S. C. 9 C. L. R. 193.

A. alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV of 1876, was summoned at the instance of the Corporation by B. a servant of the Corporation and also a Justice of the Peace. The case was subsequently heard by B., and it was shown that notice of the assessment under class II, Schedule 3 had been duly served on A. and, that though he then denied his liability to take out any license, and stated that he carried on no business as alleged, he had not appealed against the assessment under section 79. It was further shown that the assessment had been confirmed by the Chairman of the Corporation, but that the amount had not been paid. A. thereupon tendered evidence to show that he was not liable to take out any license; but B. refused to have such evidence, and convicting A. sentenced him to pay a fine. On an application, under the above circumstances, to the High Court under section 147 (Act X of 1875). Held, that the finality of the decision of the Chairman referred to in section 79 has only reference to the class under which a particular person, who is admittedly bound to take out a license under section 75 should be assessed, and not to the case where the liability to take out a license at all is denied, this being a question which can only be determined

judicially after taking evidence by a competent Court in a prosecution under section 77 and that, therefore, the refusal of B. to hear the evidence tendered by A. on this point, was illegal. Held, also, that the proceedings and ultimate conviction of A. were illegal, in as much as B. being a servant of the prosecutor, *i. e.*, the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace either at the granting or upon the hearing of the summons.

Wood v. The Corporation for the Town of Calcutta, 8 I. L. R. Calc. 891; S. C. 11 C. L. R. 357.

In order to obtain a conviction under section 77, Bengal Act IV of 1876, for keeping a boarding-house without taking out a license, it must be shown that the accused held himself out to the public as one whose business or profession it is to receive boarders for profit.

In order to pass a proper sentence of fine under section 77, Bengal, Act IV of 1876, evidence should be given of the amount of assessment on the accused's house or place of business, and of the amount payable on account of the license which the accused should have taken out.

The Vice-President of the Municipal Commission Cuddalore v. Nelson, J. H., 3 I. L. R. Mad. 129.

In construing enactments creating fiscal obligations, provisions declaring the liability to the tax are to be distinguished from those providing for its imposition. The machinery for the imposition of the tax may be independent of the obligation of the tax-payer. The duty of paying profession-tax under section 58 Madras Act III of 1871, is independent of the obligations of registration and taking out a certificate, which precede it in the same section.

Per HUTCHINS, J.:—Section 61 is not to be construed so as to prevent the Commissioners from adding to the list new names or persons not in the town at the beginning of the year.

The President of the Municipal Commission Vizagapatam v. Walker, 5 I. L. R. Mad. 269.

In the Madras Towns Improvement Act, 1871, the word "horse" includes a pony except when, by reference to the number of hands, the articles of Schedule C. show a contrary intention. Schedule C. is part of the Act. No tax is leviable under the Act on a 4-wheeled carriage on springs drawn by one pony under 13 hands.

Proceedings of 29th Dec., 1871. 6 Mad. Rep. Rul. 50.

Section 154 of Madras, Act III of 1871 was not intended to apply to omissions to take out licenses. It applies to breaches of the Act which, in a policeman's view are offences, and regarding which, if committed within his view, one of two courses is open to him, *viz.*, to arrest without warrant, or to lay an information before a Magistrate and apply for a summons or warrant. If he adopts the latter course, then sections 43 and 66 of the Criminal Procedure Code, (Act XXV of 1861) require that the information should be reduced to writing and given on oath, or solemn affirmation, before any process is issued thereon. Section 68 of the Code is limited to cases in which no complaint has been made, and the Magistrate *proprio motu* institutes a prosecution.

LIBRARY

MADRAS (CITY) MUNICIPAL ACT (V OF 1878).

Municipal Commissioners for the Town of Madras v. Muttusawmi Gramani. Weir, 548.

Sections 312 and 313 of the Act do not empower the Municipality to prescribe the materials of which walls of houses are to be constructed or the material with which the walls are to be faced.

MANDAMUS.

Reg. v. Justices of the Peace for the Town of Calcutta, 2 Ind. Jur. N. S. 214.

By Act VI of 1857, section 2 (for the acquisition of land for public purposes) it is enacted, that "wherever it appears to the local Government that any land is required to be taken by Government at the public expense for a public purpose, a declaration shall be made to that effect, under the signature of a Secretary to the Government, or of some officer duly authorized to certify the orders of Government," &c. Therefore where the Justices of the Peace for the Town of Calcutta were called upon by a writ of Mandamus issued out of the High Court at Calcutta to "continue and maintain the existing Wellington Square Tank as a public tank, and to cause the same to be supplied with water, or forthwith to substitute another such public tank," &c., and they returned that, by a notification published in the *Calcutta Gazette* on the 5th day of March instant, under the provisions of Act VI of 1857 of the Legislative Council of India, it was notified that "Whereas it appeared to the Honourable the Lieutenant-Governor of Bengal that land was required to be taken by Government for a public purpose, *viz.*, for the Calcutta Water-Works, it was thereby declared that for the above purpose a public Tank and Square known as Wellington Square, &c. was required," and proceeded to justify under this notification, &c.

Held, that the return was bad.

Reg. v. The E. I. Railway Company, Bourke's Rep. 395.

Where a Company refused to register a transfer of shares purchased by an execution creditor, on the ground that no share certificate had been produced; but the sale had been confirmed, and transfer signed by a Judge of the High Court under Act VIII of 1859, section 267, a writ of mandamus was directed to issue out of the Court ordering the Company to register the transfer of such shares, and to issue fresh share certificates in respect of them.

MASTER AND SERVANT.

Suffer Ally Khan v. Golam Hyder Khan & others, 6 S. W. R. Cr. R. 60.

A master is not criminally responsible for the wrongful act of a servant, unless he can be shown to have expressly authorized it.

Crown Prosecutor v. Shamsunder, 1 N. W. P. Rep. All. 310.

To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master whereby he abetted the offence, or some prior instigation or conspiracy.

MERCHANT SHIPPING ACT.

Proceedings of 22nd Dec. 1868, 4 Mad. Rep. Rul. 23.

A Magistrate is not empowered to try an European British subject under clause 5, section 83 of Act I of 1859 (the Merchant Shipping Act).

Proceedings of 18th Dec. 1873, 7 Mad. Rep. Rul. 32.

The Magistrate of Cochin, a Justice of the Peace, but not a European British subject, convicted and sentenced a merchant seaman, a European British subject, for the offence of wilful disobedience to orders under clause 4, section 83 of Act I of 1859. Held, by a majority of the High Court, that by force of section 72 of the Criminal Procedure Code (Act X of 1872) the Magistrate had no jurisdiction.

Reardon, petitioner, 8 Mad. Rep. 85.

The Merchant Shipping Act, 1854, 17 and 18 Vict. Cap. 104, section 243 has no application to British India. The Act applicable to cases of continued wilful disobedience of lawful commands by sailors is Act No. I of 1859, section 83, clause 5.

The petitioner was one of seven seamen convicted of continued wilful disobedience of lawful commands and sentenced to one month's rigorous imprisonment under clause 5, section 243 of the Merchant Shipping Act of 1854.

The Court:—There appear to be no grounds for interfering with the conviction of the prisoner. The petitions will therefore be dismissed. The sentence, however, is stated to have been passed under section 243, clause 5 of the Merchant Shipping Act of 1854. This Act of Parliament (Chap. 104, 17 and 18 Vict.) has, in regard to the offences charged, no application to British India, the Legislature of which, in Act I of 1859 has legislated upon the same matters, as would appear to have been contemplated by section 288 of the Merchant Shipping Act of 1854. This is not the case contemplated in section 290 of the same enactment of there existing any conflict between the two laws. Where that exists, the Merchant Shipping Act of 1854 must be followed, but not otherwise. The liability of the accused to punishment arose under Act I of 1859 of the Government of India, section 83, clause 5. Section 83 of the Indian Act corresponds in its terms with section 243 of the Parliamentary Statute. The accused has been in no way prejudiced by the mistake of the Magistrate, the record should, however, be amended by substituting the clause and section of the Indian Act for the clause and section quoted by the Magistrate.

Reg. v. Shipping Master of Calcutta, 1 Ind. Jur. N. S. 371.

Where the Captain of a ship consents to the discharge of a seaman who also desires to be discharged, the Shipping Master has no discretion in the matter, but is bound to sanction the discharge of the seaman under the provisions of the Merchant Shipping Acts of 1854 and 1862 and the Regulations of the Board of Trade.

Reg. v. Ramcomul Mitter, 1 Hyde's Rep. 195.

Section 111 of Act I of 1859 applies only to the depositions of merchant seamen.

MORTGAGE.

Reg. v. Anaji valad Govindram, 1 Bom. Rep. 93.

Reg. XIV of 1827, section 1, clause 1, Act VII (repealed by Act XVII of 1862) and the Religious Law of Hindus, are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee.

MUNICIPAL BYE-LAWS.

Chairman of the Howrah Municipality v. Montanee Bewah, 24 S. W. R. Cr. R. 70.

A bye-law made by the Howrah Municipality in the exercise of the authority vested in it by Act III (B. C.) of 1864, section 63 which forbids the erection or renewal of the external roof and walls of buildings with inflammable materials, was construed to forbid the renewal even of a portion of the roof with material.

Branson v. G. E., The Municipal Commissioners for the Town of Madras, 2 I. L. R. Mad. 362.

The Madras Municipal Act is not a "private" Act. When a public body is entrusted by the Legislature with the duty of making public improvements and powers are entrusted to it for such purpose, those powers will not be subject to a restrictive construction, though they interfere with private rights.

A Statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative right. An equitable construction is not permissible in a taxing statute when it is possible to adhere to the words of the statute. B. resided within the city of Madras, and occupied premises within a division or district of the city in which no water had been introduced by the Municipal Commissioners. The Commissioners levied a water-tax on B. in respect of his premises. B. appealed under section 189 to the President and two Commissioners, who decided that he was liable to pay the tax. On a case stated to the High Court it was held by INNES, J. and MUTTASAMI AYYAR, J. (KERMAN, J. dissenting) that upon the true construction of the Act (V of 1878) the right of the Commissioners to levy the water-tax was independent of the duty imposed upon the Commissioners to supply water.

Tukaram Vithal, 2 I. L. R. Bom. 527.

Non-compliance with notices issued by the Municipality under section 30 or clause 1 of section 39 of the Bombay District Municipal Act, No. VI of 1873 is not an offence punishable under the Act, as clause 1 of section 74 of that Act does not apply to either of those provisions. The latter clause applies only to the 2nd clause of section 39.

Proceedings of 17th Feb. 1875, 8 Mad. Rep. Rul. 3.

A mere publication of a bye-law with a penal clause at the end which had not been passed by the Municipal Commissioners or approved by the Government as applicable to the bye-law in question, though it was so passed and approved in reference to other bye-laws, cannot avail to legalize the infliction of the penalty. Bye-laws requiring licenses in cases in which the Town's Improvement Act, III of 1871, by specifying the cases in which they shall be required has implicitly declared that they shall not, are in violation of the Act.

Reg. v. Justices of the Peace for Calcutta, 2 Ind. Jur. N. S. 182.

Held, that under the 180th section of Act VI of 1863, B. C., the Justices of the Peace are required to keep up and maintain the existing tanks, reservoirs, &c. vested in them, or to substitute a new tank, reservoir, &c. for any existing tank, reservoir, &c., *i. e.*, new works of a like kind, each for each, in place of the old. Therefore, where the Justices had closed a tank for the purpose of constructing in its place a different means of water supply, a mandamus was issued directing the Justices to maintain the tank, and supply it with water or to substitute another in its place, and supply that with water.

Justices of the Peace for the Town of Calcutta v. Heraloll Seal Bourke's Rep. 412.

It is necessary to show that the owner of a bazar in Calcutta actually permitted an obstruction in the paths of the bazar, in order that a conviction may be sustained against him under Act VI of 1863, Bengal Code, Bye-law VII.

MUNICIPAL TAX.

Reg. v. Brijo Kishore Dutt, 8 S. W. R. Cr. R. 17.

The legality or formality of the mode of attachment, allowed by a Civil Court, is not a matter for a Deputy Magistrate's consideration. Where a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-creditor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of Municipal tax, convicted him of an offence under section 424 of the Penal Code, the conviction was set aside. A Deputy Magistrate has no authority to order arrears of Municipal tax due by a person to be paid out of a fine levied on him.

Thambu Chetti Subraya Chetti v. Arundel, 6 I. L. R. Mad. 287.

A building used in whole or in part for purposes other than those of public worship is not exempt from taxation under section 119 of the City of Madras Municipal Act, 1878. The feeding of Brahmans is not an act of public worship within the meaning of that section.

Proceedings of 10th March, 1880. Weir, 623.

A person who carries on two kinds of business, and who has been personally assessed under one designation in Schedule B. is not liable to be again assessed under another designation.

A merchant carrying on business in one town cannot, by reason of his purchasing goods through a Commission Agent in another town, be held to be carrying on business within the town in which the purchase is made.

Venkatesa Prabhu, accused. Weir, 626.

The matters to be considered by the Court in prosecutions under section 62 (Madras) Act III of 1871 (Municipal) are (1) whether the accused had been assessed; (2) whether he had received notice of assessment; (3) whether he had carried on his trade for two months in the official year for which the tax was demanded; and (4) whether he had paid the tax in the Municipality, or (5) had paid it in another Municipality for the same half year and had not carried on business simultaneously in both.

Sellatthachi, accused. Weir, 627.

A failure to renew a license granted under section 136, Act III of 1871 (Madras) is subject to the same penalties as an omission in the first instance to take out such license.

Proceedings of 25th January, 1876. Weir, 628.

Section 163 (Act III of 1871) (Madras) was not intended to enable Municipalities to deal in the shape of bye-laws with acts and omissions for the punishment of which the Penal Code has, in Chapter XIV, sufficiently provided. The bye-laws contemplated are bye-laws ancillary to the carrying out of the express provisions of the Act.

Proceedings of 15th Octr., 1875. Weir, 630.

The words "for the management of all matters connected with conservancy" mean the management of all matters connected with conservancy which the Act (III of 1871) (Madras) gives a Municipality power to deal with. The prevention of cattle from straying in the streets and thoroughfares is not one of these matters.

Proceedings of 18th Nov. 1879. Weir, 630.

An omission to take out licenses for animals liable to taxation under section 65 of the Act (III of 1871 Madras) is a continuing offence if such omission is continued on any or every day after the exempted term of 30 days in any half-year, and section 169 is no bar to a prosecution for such offence until the expiration of three months from the termination of the half year, or from the date of ceasing to be in possession of the animal liable to the tax.

Proceedings of 11th Aug. 1881. Weir, 631.

The ruling in High Court Proceedings 18th November 1879 followed as to offences under section 62 of the Act (III of 1871) (Madras).

OATHS (ACT X OF 1873.)

Proceedings of 1st March 1881. Weir, 550.

The provisions of the Indian Oaths Act are inapplicable to criminal proceedings.

PLEADER.

Cruise, R. in re, 14 S. W. R. Cr. R. 53.

Case in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zillah Judge, who recommended, after observing the requirements of section 16, Act XX of 1865, that such punishment should be awarded. The Zillah Judge should have called the pleader to order, and required him to apologize.

Municipality of Palamcottah v. Annasami Mudali, 6 I. L. R. Mad. 100.

The words "pleader and practising vakil" used in clause 4, Schedule B. of the Madras Towns Improvement Act, 1871, are not restricted to persons who have obtained sanads from the District or High Court, but include all practitioners in Courts of criminal jurisdiction within the Municipal limits.

Kotha Subba Chetti v. The Queen, 6 I. L. R. Mad. 252.

Where three persons, of whom one was a pleader, were tried together and convicted, under section 181 of the Indian Penal Code, of having made false statements on solemn affirmation, about the same matter, in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners Act: Held, that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. Held, also, that the trial of the three prisoners together was a grave error of procedure vitiating the trial.

Held, further, that an enquiry under the Legal Practitioners Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under section 193 of the Indian Penal Code.

Greeschunder Doss, Appellant, S. W. R. 1864, Mis. Rul. 22.

The dismissal of a pleader, notwithstanding his honorable acquittal, was held to be illegal and contrary to the provisions of Act XVIII of 1852 and all principles of justice and equity.

Courts are bound to exercise a discretion in each case as to permitting or not permitting the appearance of unauthorized pleaders.

Proceedings of 11th Jan., 1875. Weir, 273.

Pleaders of a District Munsif's Court need not file a vakalatnamah when they appear before Magistrates in criminal cases.

Proceedings of 28th March, 1879. Weir, 273.

Depositions of witnesses, or confessions taken at a police investigation are not, as far as their subject matter is concerned, any more the property of the police than the property of the prisoners, and a pleader is not guilty of misconduct of any kind in making use of such documents for the benefit of his client, when delivered to him by the client, however improperly the client may have become possessed of such documents, provided the pleader is neither party nor privy to their obtainment. The power of interim suspension given under section 14 (clause 5) of Act XVIII of 1879, when read with section 40 of the same Act, can only be after the pleader has been heard in his defence, and pending the investigation and orders of the High Court.

Kristo Lall Nag in re, 10 I. L. R. Calc. 256.

POST OFFICE ACT.

Per KEMP, J. (GLOVER, J. doubting). That the opening of a newspaper by a person employed in the Post Office and replacing it in its envelope, does not constitute an offence under section 48, Act XIV of 1866, as it could not be said that the accused stole, fraudulently appropriated, wilfully secreted, destroyed, or threw away any letter or other article sent by post.

Pannaloll Mookerjee, petitioner, 19 S. W. R. Cr. R. 4.

Per KEMP and GLOVER, JJ.:—There must be a fraudulent intention in the act of the accused before he can be convicted under section 48.

Where a prisoner was convicted, and sentenced under section 50 of Act XVII of 1850, upon the charge of fraudulently secreting a post-letter, and on appeal such conviction and sentence were confirmed:—Held, that he could not subsequently be convicted under the same section of having fraudulently made away the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction.

Reg. v. Dalapati Rau, 1 Mad. Rep. 83.

On a reference by a Session Judge in reviewing the monthly magisterial returns. Held, that a conviction and sentence recorded by a Magistrate F. P. under section 54 of the Post Office Act No. XVII of 1854 (corresponding with section 48 of the Act of 1866) were illegal; as the Magistrate had no jurisdiction finally to dispose

Reg. v. Atmaram Vaman Bhandarkar, 3 Bom. Rep. Crown Cases, 8.

of the case, but was bound to have committed it for trial before the Court of Session.

Reg. v. Vithu bin Mallu, 5 Bom. Rep. Crown Cases, 36.

A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under section 47 of the Indian Post Office Act, (Act XIV of 1866).

Viraswami Naick. Weir, 31.

A Post Office official absenting himself from his station without leave should be charged under section 47 of the Post Office Act, XIV of 1866, and not under section 166 of the Penal Code.

POUND KEEPER.

Reg. v. Vakta valad Lakhu, 9 Bom. Rep. 164.

Where a Magistrate convicted, under section 27 of Act I of 1871, a person who was not himself a pound-keeper, but was merely entertained by the Police Patil, who was *exofficio* pound-keeper under section 6 of the Act. The High Court annulled the conviction and sentence passed upon the accused.

PRISONER'S TESTIMONY ACT (XV OF 1869).

Lingam Lakshmaji Pandit & Gade Pattabhiramaiya, prisoners. Weir, 565.

A prisoner confined in a jail situated within the limits of the High Court's Ordinary Original Civil jurisdiction cannot be taken out of jail to answer a criminal charge except upon the special orders of the High Court.

RAILWAYS.

Reg. v. Flood, 8 S. W. R. Cr. R. 43.

Where some coolies were employed in assisting a ballast train into motion at a Railway Station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell and was so injured that he afterwards lost his life. *Held*, that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion.

Reg. v. Manphool, 5 N. W. P. Rep. All. 240.

The prisoner, a servant of a Railway Company, was convicted, under section 29 of Act XXV of 1871, of endangering the lives of the persons in a certain train by negligence. There was no evidence that the safety of any person in any train had been endangered by his neglect of

duty. On the contrary, by reason of precautions taken by other persons, any possible danger which might have resulted from his neglect was avoided. Held, that he could not be convicted and punished under section 29 of Act XXV of 1871.

Snell v. The Queen, 6 I. L. R. Mad. 201.

Liability to conviction under section 26 of the Indian Railway Act, 1879 arises not from the consequences directly referable to the breach of the rule, but because of the danger which the breach of the rule entails.

Proceedings of 2nd April 1868, 4 Mad. Rep. Rul. 9.

Magistrates of all grades are, under Madras Act, III of 1865, competent to try persons charged with offences under section 26 of the Railway Act, XXIII of 1854.

Proceedings of 13th Nov. 1871, 6 Mad. Rep. Rul. 37.

Section 34 of Act XVIII of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed.

Proceedings of 20th Nov. 1871, 6 Mad. Rep. Rul. 41.

A Railway watchman was charged before a Head Assistant Magistrate with an offence under section 26 of Act XVIII of 1854. That charge was dismissed, but the Session Judge ordered a fresh trial. Held, that in so doing, the Session Judge acted without jurisdiction.

Proceedings of 29th June, 1872. 7 Mad. Rep. Rul. 8.

Accused was tried and convicted by a Sub-Magistrate of an offence under section 25 of Act XVIII of 1854, punishable with transportation for life or imprisonment for any term not exceeding seven years. Upon a reference, Held, that by virtue of Madras Act, III of 1865, the Sub-Magistrate had jurisdiction, that Act not being repealed by the Schedule attached to Act VIII of 1869.

Proceedings of 18th Jan., 1875. 8 Mad. Rep. Rul. 1.

On the 10th April 1874, prisoner's cow strayed on a railway provided with a fence. On the 13th June following, Government published Rules under section 21 of the Railway Act Amendment Act (XXV of 1871) determining what kind of fences should be deemed to be suitable for the exclusion of cattle. On the date of the offence there were no such rules. No evidence was offered of the state of the fence, and the prisoner was convicted solely on his admission that he was the owner of the cow. Held, that in this case, the state of the fences required specific proof, in the absence of which the conviction could not be sustained.

Reg. v. Lakshman Balaji, 3 Bom. Rep. Crown Cases, 10.

Held, that a conviction by a Magistrate F. P. under section 26 of the Railway Act (No. XVIII of 1854) was illegal for want of jurisdiction.

Reg. v. Tribhuvan Ishwar, 3 Bom. Rep. Crown Cases, 54.

By section 35 of the Railway Act (No. XVIII of 1854) District Police officers in the Presidency of Bombay could punish, to the extent of the powers conferred upon them in petty offences, any offence made punishable under the Act, by fine not exceeding Rs. 20. But section 5 of Reg. XII of 1827 (authorising the appointment of District Police officers), and section 41 of the same Regulation (defining the limit of their jurisdiction), being both repealed by Act XVII of 1862:—Held, that a Subordinate Magistrate had no jurisdiction to impose a fine under section 17 of Railway Act.

Reg. v. Larkins, 4 Bom. Rep. Crown Cases, 4.

A conviction and sentence by a Magistrate F. P. under the Railway Act (XVIII of 1854) reversed; there being no complaint made before the Magistrate, as required by the Code of Criminal Procedure, (Act XXV of 1861).

In the matter of a Prohibitory Notice under Reg. XII of 1827, section 19 clause 6, 8 Bom. Rep. Crown Cases, 23.

A notice prohibiting general traffic over certain level crossings on a railway, provided for particular villages, forbidden, as not falling within the scope of Reg. XIII of 1827, section 19, clauses 1 and 6.

Proceedings of 28th August, 1879. Weir, 566.

Since the date on which Act IV of 1879 came into force a 3rd class Magistrate has no jurisdiction to try offences under the Railway Act, notwithstanding that he had such jurisdiction under Act XVIII of 1854.

Proceedings of 18th Feb., 1879. Weir, 570.

Section 27, Act XVIII of 1854 (25, Act IV of 1879) applies only when a Railway servant recognizing a contract as subsisting, and still professing his readiness to discharge the duty it entails, omits, through negligence, to perform such duty.

H. C. Judgment, 15th Dec., 1879 (Full Bench). Weir, 572.

A conviction of a father accused of evading payment of the fare due for his son, a child aged 6 years, sustained as a conviction of abetting the offence charged.

Proceedings of 15th Dec., 1879. Weir, 573.

Persons other than passengers cannot be convicted under section 33 of the Railway Act (IV of 1879) for the offence of standing on the foot-board of a Railway carriage.

REPEALING ACT (ACT XVI OF 1874).

Proceedings of 29th Sept. 1876 Full Bench. Weir, 574.

The repeal of Madras Act, III of 1865 by Act XVI of 1874 has not deprived Courts of jurisdiction under special or local laws established by virtue of the repealed Act.

REGISTRATION ACT.

Reg. v. Abdool Kurreem, S. W. R. Cr. R. 32.

An offence under section 91 of the Registration Act ought not to be tried with the assistance of a jury. Where, however, such offence was tried with the assistance of a jury, and the verdict of the jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings.

Reg. v. Hiralal Dass, 8 B. L. R. 422; S. C. 17 S. W. R. Cr. R. 39.

The proceedings of a Magistrate who tries prisoners charged with having committed offences under sections 93 and 94 of the Indian Registration Act, XX of 1866 are not illegal and without jurisdiction, or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his capacity of Sub-Registrar. Under such circumstances, where it can be done, it would be better if the case were tried by some other person.

Reg. v. Ramdhary Singh & others, 10 S. W. R. Cr. R. 5.

A Registrar under Act XX of 1866 is competent under section 95 to institute a prosecution for any offence under that Act.

Reg. v. Soleemooddeen & others, 7 S. W. R. Cr. R. 99.

Three persons who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property were held guilty under section 94 of the Registration Act, XX of 1866.

Ashanoollah & others case of, 10 S. W. R. Cr. R. 21.

In the case of a prosecution under Act XX of 1866, a Magistrate has full power to entertain and finally adjudicate on the charge, and is not bound to commit to the Sessions. The words in section 95 of that Act, "all prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate," being interpreted to mean that the whole of a criminal trial from complaint to adjudication shall be carried out before and by the same person.

Legal Remembrancer v. Radhoo Churn Ash 18 S. W. R. Cr. R. 3.

Held, under Act I of 1868, section 2, clause 18 the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under section 80, Act VIII of 1871 should be simple or rigorous, but that, as he had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant.

Bunwary Poddar, 23 S. W. R. Cr. R. 55.

An enquiry made by a clerk of a Registry Office, with a view to ascertain whether the person who brings a receipt to take back a document, which could not be returned in the first instance, and for which a receipt was accordingly given, is the person in whose possession the receipt ought to be, is an enquiry within the meaning of the Registration Act, VIII of 1871, section 80.

Sardharilal in re 13 B. L. R. App. 40.

A. was charged before an Assistant Magistrate by a Sub-Registrar with having committed an offence under section 228 of the Penal Code and fined. Held, that the Sub-Registrar should have tried the matter himself under sections 435 and 436 of the Criminal Procedure Code (Act X of 1872), and as the Magistrate acted without jurisdiction, the order must be quashed. By section 82 of the Registration Act, VIII of 1871, a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of section 228 of the Penal Code, and as he is legally authorized to take evidence, he is a "Court" as defined by the Evidence Act, section 3.

Proceedings of 20th March, 1876. Weir, 227.

A 2nd class Magistrate has no jurisdiction to try an offence punishable under section 80 of the Indian Registration Act (VIII of 1871). Section 8, clause 2 of the Criminal Procedure Code (Act X of 1872) ousts his jurisdiction.

Queen Empress v. Balesar Mandal, 10 I. L. R. Calc. 604.

Where the accused was tried for intentionally making a false statement in the course of certain proceedings taken before a Registrar: Held, that even assuming that such proceedings were taken under section 72 of the Registration Act, and not as they should have been under section 73, the appearance of the accused before the Registrar and his taking no objection to the form of the proceedings will cure the irregularity for the purposes of a criminal trial under the provisions of the Registration Act. Nor under similar circumstances will the want of verification of a petition of appeal on the part of the applicant, as provided by section 73 of the Act oust the jurisdiction of the Criminal Court.

Reg. *v.* James Berry (28 L. J. (M. C.) 86; 8 Cox, C. C. 121); The Queen *v.* Thomas Fletcher (L. R. 1 C. C. R. 320); Turner *v.* Post Master General (5 B. and S. 756); The Queen *v.* Hughes (L. R. 4 Q. B. D. 614; 14 Cox, C. C. 285); The Queen *v.* Smith (L. R. 1 C. C. R. 110; 11 Cox, C. C. 10) followed.

RIGHT OF PRIVATE DISTRAINT.

Reg. v. Kanhai Shahu & others, 23 S. W. R. Cr. R. 40.

A zemindar is justified in exercising his right of private distraint of crops, if he has served the defaulters with written notices under Act X of 1859, section 116: and in such a case, ryots, who knowingly resist the restraint, are not protected by the Penal Code, section 79. But, if the zemindar's people enter upon crops with intention of dis-

training without notice, the ryot-owners are justified in considering such action as trespass.

Quære :—Would the ryots in the latter case be protected by the provisions of the Penal Code, sections 97 and 99, in preventing the distraint and confining the men employed to make it?

SALT.

Reg. v. Boidonath & others, 7 S. W. R. Cr. R. 48.

By section 18, Act VII of 1864, salt, not being conveyed by the route and to the place prescribed in the rowanna, becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under section 39 and not in the Magistrate.

Reg. v. Ofatulla, 6 B. L. R. 381; S. C. 15 S. W. R. Cr. R. 21.

If salt exceeding five seers is found within the limits prescribed by section 12, Act VII of 1864 (B. C.) unprotected by a rowanna or pass, the salt is contraband, and liable to seizure, and the parties transporting it are punishable under section 16. It matters not whether any attempt or intention to sell is proved or not.

Bhagbut Dey & Hurry Krishto Nundy, petitioners, 18 S. W. R. Cr. R. 64.

A. was convicted under section 16, Act VII (B. C.) of 1864 and B. under section 21 of the same Act; the former with having had in his possession salt not covered by a rowanna, and the latter with having sold to A. the said salt. Held, that the conviction of A. under section 16 was illegal, the salt in his possession having been a portion of salt for which B. had taken out a rowanna; but that the conviction of B. under section 21 was proper, as he had failed to certify the salt sold by him to A. on the back of the rowanna.

Gungadhur Sahoo & others, petitioners, 22 S. W. R. Cr. R. 9.

In a case of conviction under Act VII of 1864 of having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt, and also on the servant or gomasta of the owner who has the salt in his possession, as the possession of the latter is the possession of the former.

Reg. v. Chundee Churn Das, 22 S. W. R. Cr. R. 71.

Where a person who had taken a quantity of salt under a rowannah for transit from Calcutta to his golah, part of the journey to be performed by water and part by land, conveyed a portion of it to his golah where the rowannah was, and was conveying the rest in two batches by land, it was held that he could not be convicted under Act VII of 1864, section 16.

Reg. v. Chundro Mohun Bhooya, S. W. R. Cr. R. 82.

In a case of a conviction under section 16, Act VII of 1864, for having in possession contraband salt, the Sessions Judge recommended that it should be set aside on the ground that the salt had already reached its destination and was not *en route*; section 18 consequently not applying. The High Court set aside the conviction accordingly.

Kishory Mohun Pramanick & others, 23 S. W. R. Cr. R. 6.

A rowannah as defined by Act VII (B. C.) of 1864 is complete on the face of it without any certificate by way of endorsement signed by the Superintendent showing that the endorsement made by the Preventive officers of Customs has been examined by him. Section 16 of Act VII only gives power to fine when the salt is not specified in a rowannah.

Reg. v. Modun Mohun Pal Chowdhry & others, 23 S. W. R. Cr. R. 7.

The High Court in this case upheld the conviction by the Magistrate under Act VII (B. C.) of 1864, section 18 both of the owner of contraband salt and of his agent who was transporting the salt, and declined to direct the Magistrate to pass sentence on the manjees of the boat in which the salt was being transported when seized, their boat having been already confiscated by the Magistrate.

Reg. v. Pyla Atchi & others, 1 I. L. R. Mad. 278.

The collecting of salt-earth from salt-swamps, or the being in possession of salt-earth for the purpose of making salt is not an offence within the meaning of section 18 of Madras Regulation I of 1805.

Spontaneous Salt Cases, 3 I. L. R. Mad. 17.

"Spontaneous salt" is salt which produced naturally requires no process of manufacture to render it suitable for human consumption. To collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, or to be found in the act of conveying it home from the place in which it is collected, are not *per se* acts prohibited by Regulation I of 1805, section 18.

Semble :—In districts to which the Salt Excise Act, 1871, is extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise is an offence.

Proceedings of 1st July, 1869. 4 Mad. Rep. Rul. 53.

Being in possession of salt-earth from which salt may be manufactured with the object of making salt is an offence under the salt laws.

Proceedings of 19th July, 1878. Weir, 584.

Salt spontaneously generated from the earth is not salt manufactured from salt-earth, and is therefore not earth-salt within the meaning of Madras Act II of 1878.

Proceedings of 19th July, 1878, No. 1072. Weir, 584.

The possession of salt-earth in so far as it is evidence of obtaining salt in an illicit manner is evidence of an offence under Regulation I of 1805.

Proceedings of 30th August, 1879. Weir, 585.

Mere possession of earth-salt without proof of possession with intent to defraud the public revenue is not an offence punishable under Madras Act II of 1878.

Offences against Salt-Laws are not cognizable by Courts of Session.

Proceedings of 5th Sept., 1879. Weir, 586.

Mere possession of salt-earth in the absence of evidence of a purpose to convert the salt-earth into earth-salt held not to amount to an offence under Madras Act II of 1878.

Proceedings of 8th Nov., 1879. Weir, 586.

At the trial of the accused for the offence of being in possession of salt-earth with the intention of making the same into earth-salt, the intention imputed should be explained to the accused, and if the intention imputed is not found, the conviction is illegal.

Proceedings of 16th Dec., 1879. Weir, 587.

The existence or absence of an intent to defraud the revenue is a question of fact to be proved or inferred from the circumstances, (*e. g.*, conduct consistent or inconsistent with innocence, admissions, &c.) of each individual case.

Pira Mathu Nandan & others, accused. Weir, 588.

Possession of salt-earth in large quantities by a dealer, combined with circumstances showing an intent to defraud the revenue, may be sufficient to establish the required intention.

Proceedings of 18th July, 1879. Weir, 588.

The employment by fishermen of salt-earth for the purpose of curing fish held not to amount to an offence under the Salt Excise Act, section 15.

Proceedings of 19th July, 1879. Weir, 589.

The manufacture of an inferior substitute for salt (such as brine) is not an offence within the provisions of section 15.

Government Pleader, Appellant. Weir, 590.

In view of the stringent mode in which the salt-laws are enforced, conduct which in other circumstances might be evidence of guilt should not be too strictly construed.

Proceedings of 13th Dec., 1878. Weir, 599.

Imprisonment in default of payment of a fine adjudged under the Salt-Laws (Regulation I of 1805, Act XVII of 1840 and Madras Act II of 1878) is illegal.

Proceedings of 2nd Oct. 1879. Weir, 600.

The power to award imprisonment in default of payment of a sentence of fine passed for an offence against the Salt Laws is restricted within the limits prescribed in Act VII of 1852, that is to say, the period of imprisonment adjudged in default must not exceed 10 days.

Proceedings of 17th Jan. 1880. Weir, 601.

The ruling of 13th December 1878 explained.

H. C. Judgment 15th December 1879 (Full Bench). Weir, 602.

It is competent to a Magistrate acting under Act XVII of 1840 to adjudge either a sentence of fine not exceeding Rs. 50, or a sentence of imprisonment not exceeding thirty days. An order of the Executive Government prohibiting the Magistrates from exercising the discretion vested in them by law of adjudging sentences of fine or imprisonment held to be *ultra vires*.

Proceedings of 28th Feb. 1880. Weir, 604.

The Full Bench Judgment of 15th December 1879 explained and distinguished from the case dealt with in the High Court's Proceedings of 13th December 1878.

Proceedings of 1st April 1880. Weir, 605.

When a portion of salt-earth, salt or other article in bulk is produced and received in evidence as a sample of the bulk, the whole bulk is to be taken to have been produced before the Court within the meaning of section 418, Criminal Procedure Code.

Supbaraya Kounden & Tolasi Kounden accused. Weir, 605.

Conveyance of salt from one portion of foreign territory to another through British India, without a pass, held to be smuggling under Regulation I of 1805.

SLAUGHTER HOUSES.

Municipal Commissioners for the Suburbs of Calcutta in re, 6 B. L. R. App.28; S.C. 14 S.W.R.O.R.67.

R. was fined by the Deputy Magistrate for using an unlicensed slaughter house. He subsequently gave an ijara or lease to A. to carry on the business. R. was prosecuted again for evading the law by "slaughtering cattle or allowing cattle to be slaughtered" without a license. He was fined Rs. 200 by the Deputy Magistrate. On appeal to the Sessions Judge, he was acquitted. On the motion of the Municipal Commissioners for a rule to set aside the order of the Sessions Judge, it was held:—*Per* JACKSON, J. that R. by giving a lease to B. had parted with his interest, and had ceased to have any power to allow or disallow the slaughtering of cattle. That section 7 (Act VII of 1865 B. C.) provides penalties only, and does not describe an offence or relate to a conviction. It is quite another question whether the act itself is an offence, irrespective of

section 7, and whether R. could be dealt with as an abettor. *Per* MITTER J. (dissenting). The Judge has found that the lease was given by R. with the avowed object of continuing the slaughter house, and admittedly for the express purpose of evading the law; the case therefore falls within the express words of the section, or allows cattle to be slaughtered."

Haldane E. Vere, petition of, 6 S. W. R. Cr. R. 77.

The length of notice to be given to persons holding licenses for carrying on slaughter houses under Act VII of 1865 B. C. must be determined in each case according to its own particular circumstances.

Municipal Commissioners for the Suburbs of Calcutta v. Zamir Shaikh & others, 16 S. W. R. Cr. R. 4.

The words "uses any premises" in section 77, Act III of 1864 mean using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. No person is liable to any penalty under section 1, Act VII of 1865, except a person who without a license uses a place or building as a slaughter house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; but a person who may be the mere servant of a butcher, killing cattle in a particular slaughter house, or a butcher resorting accidentally or occasionally to a slaughter house for the purpose of killing, and killing an ox or sheep there, does not use the place as a slaughter house within the meaning of section 1, Act VII of 1865 B. C.

Proceedings of 1st Feb., 1871. 6 Mad. Rep. Rul. 18.

Defendant was charged under section 108 of Madras Act X of 1865, with having used a place not licensed by the Municipal Commissioners as a slaughter house. The finding on the facts was that defendant slaughtered a sheep for his own private purpose. Held, no evidence of the offence charged. A Magistrate is not authorized to alter his finding once recorded.

STAMP ACT.

Reg. v. Jetha Moti. Reg. v. Virju Kuvarji, 2 Bom. Rep. 129.

The mere engrossing of a deed on unstamped paper, or the using it as a witness, is not an offence under section 3 of Act X of 1862.

Reg. v. Jotee Bin Satoo & others, 1 Bom. Rep. 37.

The mere engrossing of a document requiring a stamp on unstamped paper, constitutes no offence under the Stamp Act X of 1862.

Reg. v. Nadi Chand Poddar, 24 S. W. Cr. R. 1.

That which the Magistrate has to adjudicate upon, on a prosecution coming before him under section 24 of the Stamp Act (XVIII of 1869), is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper

officer. Any person who makes himself liable by committing an offence within the terms of section 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under section 43. If an instrument called a promissory note or other document of that kind and as such liable to the duty imposed by the Act is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made.

The Magistrate of the District should not himself try a case in which he instituted the prosecution as Collector.

Empress v. Dwarkanath Chowdhry & another, 2 I. L. R. Calc. 399 F. B.

The accused was prosecuted under Act XVIII of 1869, section 29 for executing a document on insufficiently stamped paper. The document recited that, "Whereas A. and B. have sold me 2 gandas 3 cowries of land under a kobala dated the 9th of Jeyt 1285, in lieu of a consideration of Rs. 695, and whereas, I have returned to the vendors in all 4 cottas of land worth about Rs. 25. And whereas in lieu of the said land the said vendors have given me 4 cottas of zerait land held by them, now I or my heirs shall have no objection or contest whatever in regard to the mutual exchange of lands between the vendors and me the purchaser; hence I have executed this chitti by way of conveyance or deed of exchange, which may be of service, when required." This document bore a stamp of eight annas, and it was executed only by the accused and presented by him for registration. Held, that the document was an instrument of transfer within the meaning of Art. 38, Sch. II, Act XVIII of 1869. Held, also, that a Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under section 29, Act XVIII of 1869 had any intention to defraud by evading payment of stamp duty.

Empress v. Gangadhur Bhunjo & others, 3 I. L. R. Calc. 622; S. C. 2 C. L. R. 179.

A Magistrate who has been authorized by the Collector of a district, under section 43 of the Stamp Act (XVIII of 1869) to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecutions.

Empress v. Soddanund Mahauty & others, 8 I. L. R. Calc. 259; S. C. 10 C. L. R 365.

Six persons acted as arbitrators in a dispute between two of their fellow-villagers and delivered their award in writing. Subsequently, the award was filed in evidence by one of the disputants in a civil suit in the Court of the Munsif of Cuttack, who on the ground that the document bore no stamp, impounded it and forwarded it to the Collector, who ordered the writer to be prosecuted. The Deputy Magistrate, to whom the case was referred, summoned the six persons who had acted as arbitrators, and fined them Rs. 25 each. On a reference to the High Court by the District Magistrate,—Held, that the conviction was illegal, and should be set aside. Held, also, that the procedure laid down in section 37 of the

Stamp Act (I of 1879) must be strictly followed; and that, before a prosecution can be instituted under section 40, the Collector is bound to form an opinion as to whether the offence was committed with the intention of evading payment of the proper stamp.

Empress v. Deoki Nandan Lall, 2 I. L. R. All. 806.

The Collector being primarily responsible for the prosecution of offences against the Stamp Acts of 1869 and 1879, should not himself try, as a Magistrate, a person accused of an offence against either of those Acts.

Reg. v. Adjoodhya Pershad & others, 2 N. W. P. Rep. All. 188.

A prosecution, under section 3 of Act X of 1862, not having been authorized by the Collector of the Stamp Revenue of the district, or any other officer specially authorized by the Government in that behalf, is, under section 52 of that Act, altogether irregular.

Reg. v. Buldeo, 2 N. W. P. Rep. All. 453.

Entries of loans in account books cannot be treated as bonds within the meaning of clause 5, section 3 of Act XVIII of 1869.

Reference from the Board of Revenue under section 46 of the Indian Stamp Act, 5 I. L. R. Mad. 394.

Under the provisions of the Indian Stamp Act, 1879, the duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of the execution of the document, but the penalty leviable is determined in all cases by section 37B. of the Indian Stamp Act, 1879.

Proceedings of 15th Feb. 1867, 3 Mad. Rep. App. 27.

The words in section 3 of Act X of 1862: "Unless in any case in which a higher penalty is imposed" and "not exceeding" apply both to the penalty of Rs. 100 and to one higher than ten times the value of the omitted stamp. Attesting witnesses and persons who draft documents and note the fact with their signatures at the foot do not come within the words "make execute, sign, or be a party to" used in the section, and are therefore not punishable under it.

Proceedings of 28th Nov. 1870, 6 Mad. Rep. Rul. 5.

Intention to evade payment of stamp duty is not an essential ingredient in the offence described by section 29 of Act XVIII of 1869. Held, that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section.

Proceedings of 30th July 1872, 7 Mad. Rep. Rul. 9.

By section 6 of Act I of 1868 an offence committed under section 3 of Act X of 1862, when that enactment was in force, is still an offence and may be tried under that enactment. By force of section 3, clause I of Act I of 1868, the mere repealing of section 2 and Schedule 3 of Act XVIII of 1869 by Act XIV of 1870 did not *per se* revive the repealed portions of Act X of 1862.

Reg. v. Gapau Kom Kusaji, 1 Bom. Rep. 92.

The refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt is not an indictable offence.

Reg. v. Devsanvat bin Shiramsanvat, 3 Bom. Rep. Crown Cases, 34.

Conviction and sentence for an offence under a Stamp Act reversed on a reference by a Session Judge; as the proceedings of the Magistrate who tried the case were highly irregular.

Reg. v. Bai Divali, 5 Bom. Rep. Crown Cases, 48.

Conviction and sentence under section 3 of Act X of 1862 (Stamp Act) reversed, because no complaint had been made before the trying Magistrate. A memorandum under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint so as to authorise the issuing of a summons.

Empress v. Jallu, 4 I. L. R. All. 216.

The sale of Court fee stamps without a license is not an offence.

Brojender Coomar v. Bromomoye Chowdhrani, 4 I. L. R. Calc. 885.

Where an account in a hatchitta has two sides to it, the one headed "amount advanced" and the other headed "amount received;" and the amount actually due on such account varies from time to time, and depends upon the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under art. 5 sched. 11 of Act XVIII of 1869.

The facts of this case, so far as they are material to the question of whether or not a stamp was necessary, sufficiently appear from the judgment which was delivered by WHITE, J.:—The plaintiff, Brojendro Coomar Roy Chowdhry, who is appellant before us, has sued three defendants, one whom alone, Bromomoye Chowdhrani, is the respondent in this appeal, to recover a sum of Rs. 20,825.

He alleges in his plaint that these three defendants borrowed that sum on seven different occasions, between the 23rd Assar and the 12th Kartic of 1281 (6th July and 28th October 1874) and that the several advances were each entered at the time of borrowing in a hatchitta, which he produced, and which purports against each item to bear the signature of the male defendant and the seals of the two female defendants, of whom Bromomoye is one. The lower Court has passed a decree against two of the defendants, namely, Sampadmani and Mohinee Chundra, for the whole amount claimed, but against the second defendant, who is the respondent before us, only the first item appearing in the hatchitta, *viz.*, 3,500 rupees and interest. A one-anna adhesive stamp was affixed at the head of the defendant's account in the hatchitta, which the Court has appropriated to the first item of advance contained in the account. But as regards the remaining six items,

no stamp being affixed against any of them, the Subordinate Judge has yielded to Bromomoye's objection, that they are inadmissible in evidence for want of a stamp, and has not considered himself at liberty to consider the evidence adduced by the appellant to show that the advances to which these six entries relate, were made. Hence the decree against Bromomoye is confined to the amount of the first advance. The difficulty of the stamp with regard to the remaining six advances was got over in the case of the first and third defendants, because the Court held that upon their pleadings they had admitted the whole sum claimed in the suit to be due, and they have not appealed against the decree, which the Court has accordingly passed against them. The first point we have to consider is, whether the entries in question require a stamp or not. The provision in the Stamp Act under which the lower Court holds that a stamp is required, is the 5th article of schedule II. That article imposes a one-anna stamp upon a particular note or memorandum. The words of the article descriptive of the document to be stamped, and which are considered by the Court below to apply to each item in the hatchitta, are these:—"A note or memorandum written in a book, whereby a debt or part of a debt amounting to Rs. 20 or upwards is acknowledged to be due." Now if any one of the entries in the hatchitta had stood alone, and had been intended by the parties to form an isolated entry in the book, it might have been contended with considerable force that it fell within the description of document mentioned in the 5th article as requiring a stamp. We think, however, that the entries cannot be detached from the account of which they form a part. That account has two sides to it, the one headed "amount advanced," and the other "amount received." The amount due varies from time to time, and depends upon the relation of the amount advanced, to the amount received. In the present case no sum is entered under the head of "amount received," but that is an accident, and makes no difference in considering the question as to what is the nature of the document which is offered in evidence. The intention of the parties in requiring the signature or seal of the borrowers to each sum advanced is, strictly speaking, to secure under their hands an acknowledgment that the sum is advanced. Whether or not that sum is due, or a larger sum or a less sum, depends upon the state of the account. In determining whether a document comes within the description of a document upon which a stamp is imposed by the Stamp Act, we must look at the entire document, and see whether it fairly falls within the description. The document in this casewhich is offered as evidence is not a note or memorandum, acknowledging a debt or part of a debt to be due, nor a series of such entries and memos., but an account between the parties of the character above-mentioned, and as such did not in our opinion require a stamp.

Empress v. Niaz Ali & others, 5 I. L. R. All. 17.

Section 51, Chapter VI of Act I of 1879, enacts that "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled, in the cases hereinafter mentioned &c." According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Chapter VI

of the said Act, or his duly authorised agent, to make an oral deposition on oath, &c." Held, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. Held, therefore, where a person had applied for a refund under Chapter VI of Act I of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under section 181 or section 193 of the Indian Penal Code was sustainable.

Binja Ram v. Raj Mohun Roy, 8 I. L. R. Calc. 282.

Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment within the meaning of the Stamp Act (I of 1879), Schedule I, Art. I, is a question depending in each case upon the form and intention of the entry. GARTH, C. J. :—It is difficult to decide a case of this kind satisfactorily without being furnished with an exact copy of the so-called "acknowledgment." If the defendant subscribed his name to the entry as an admission that he owed the plaintiff the sum or sums mentioned in it, there is no doubt that the Munsif is right in excluding evidence of the acknowledgment on the ground that it was not duly stamped. But whether an account thus signed by the defendant amounts to such an acknowledgment or not, depends in each case upon the form and intention of the entry.

Juggernath Gomastah in re, Feby. 1885.

This was a reference under section 432 of the Criminal Procedure Code (Act X of 1882), by the Magistrate of the Northern Division of Calcutta for the opinion of the High Court. The case was one of several prosecutions of a like nature started by the Collector of Calcutta involving a nice, but important point of law. The question submitted for decision was, whether the entry in the Khatta book marked Exhibit B. and proved to have been signed by the defendant, was a receipt within the meaning of clause 17, section 3 of the Stamp Act (Act I of 1879) and as such required a one-anna stamp under Article 52, Schedule I of the said Act.

Independent evidence was given to show that the amount paid was in satisfaction of a debt, and the entry also expressly referred to the former transaction out of which the debt arose. The amount in figures and the defendant's name were shown to have been written by the defendant, at the time he received the payment, and it was admitted that no separate receipt of any sort was taken from the defendant, or from the firm on whose behalf he received the money.

The following is the evidence taken before the Magistrate. Grish Chunder Das on solemn affirmation. To Hume: I have got a cloth shop in Burra Bazar. I know the defendant Juggernath. He is the Gomastah of Shivaram Megraj a firm with which I have transactions. On the 13th of Baishak 1291 I bought of them a bale of cloth. The transaction was entered in the book of the firm under my superintendence. This is the entry

(Ex A.) of the bale of cloth in the stock book. All goods received are entered in this book. I paid for the goods on the 7th Ashad (2nd June). I paid Rs. 405-4 the price of the bale of cloth to Juggernath. I gave him a note for Rs. 500, and he gave me the change. I have got an entry of the payment in the cash book (rokur). I myself paid the money. This is the entry (Ex. B.).

EXHIBIT B.

Year 1291.
Dated 7th Assar.
Debit side.

Debited to Sobaram Megraj, ...	405	4	0	
Through Juggernath on account of 13th Bysack, Govt. note $\frac{P}{45}$ 23466, No., 1 piece, ...	500	0	0	405 4 0 Juggernath.
Deduct returned, ...	94	12	0	
	405	4	0	

It bears Juggernath's signature. He signed it in my presence. I asked him to sign. I took no separate receipt or purjah. The whole of the Hindi writing is in Juggernath's hand. I asked him to write his name and the amount. That is the practice and style of doing work in the bazar. To the Court: I have up to this date taken no receipt from the firm of Megraj Shivaram, nor is there any practice for taking such receipts. All payments entered in the book bear the signature of the payees and no separate receipts are taken. We don't take their signatures. We simply make them write their names.

Question:—Why do you do that?

Answer:—If there be ever any golmal (dispute) we shall say: Here is your Juggernath who took the money (points to the signature).

To Gopal Lall Seal for defendant: Shivaram Megraj have many servants. To fix the man who actually took the money we take his signature, so that if ever any dispute arose as to who took the money, I should refer to the book. If receipts are taken they are taken on separate paper and a stamp is fixed. That is from strangers. A receipt is usually taken in this language (gives a form). A receipt never consists of only the amount and signature. The names of the firm should appear. No goods are entered in Ex. B. In a receipt goods would be mentioned.

To the Court: Exhibit B. contains the name of the firm.

To Hume in re-examination: The entry Ex. B. refers to the date of the transaction (Ex. A.) and by that date (13th Bysack) I connect the 2 entries. If the accused had refused to sign, still I would have paid, as the firm had authorized me to pay to any of their 4 servants of whom the accused is one.

Kaloo Ram, (to Hume) I am a Banker and dealer. I am a member of the firm of Shivaram Megraj. Accused is a servant of the firm. I know

complainant. We sold him a bale of cloth on the 13th Baishak. We have been paid for it. Defendant brought the money. We gave the complainant no receipt. This handwriting in Ex. B. is in Juggernath's hand, *viz.*, his name "Juggernath Rs. 405-4" I can't read Bengali.

The following are the judgments of the High Court:

TOTTENHAM, J. :—It appears to me that Exhibit B. which was submitted to us by the Presidency Magistrate with his letter of the 8th January last, does come within the meaning of clause 17, section 3 of the Stamp Act (I of 1879). The signature of Juggernath, and the amount, Rs. 405-4, in his handwriting form in my opinion a writing whereby the debt was acknowledged to have been paid off. I think so, because of the place in which this writing appears, namely, against the entry in the debtor's book where the debtor recorded payment of his debt. It is true that we must look to the intention of the parties as to what the writing by Juggernath was intended to import; and upon the evidence I have no doubt that the intention was, that what Juggernath wrote should operate as a receipt. I think therefore, that this writing falls within the definition of a receipt in clause 17, section 3 of the Stamp Act.

GHOSE, J. :—I am of the same opinion. It seems to me that the entry in Exhibit B. coupled with the writing and signature of Juggernath the gomastah of the firm of Megraj, amounts to a receipt within the meaning of clause 17, section 3 of the Stamp Act. Mr. Sale, on behalf of Juggernath contended that in this case the question was one of intention, namely, whether the parties intended that the entry and signature in question should operate as a receipt. I accept this contention as perfectly sound, and it seems to me, that in every case of the kind it should always be a question of intention. On turning to the evidence of Grish Chunder Das, the owner of the shop from which the debt in question was due, and reading Exhibit B. by the light of that evidence, it appears to me to be clear, that the intention of the parties was, that the entry and the signature to it of Juggernath should have the same effect as a receipt.

Mr. Sale also called our attention to several rulings of this Court. Those decisions I observe were passed under the Stamp Act of 1869. The present Stamp Act of 1879 is more comprehensive, so far as the definition of a receipt is concerned, and it appears tnat in the case in which those decisions were passed, the true question was whether the particular document which was tendered in evidence was admissible in law, by reason of no stamp having been used. The question here is a different one, and on examining the observations made by the learned Judges in those cases, it would appear that if any principle of law is deducible from them, as applicable to this case, it is a principle rather in favour of the view taken by the Crown, than opposed to it.

STORING JUTE.

Bhugwan Chunder Koondoo & another petitioners, 19 S. W. R. Cr. R. 4.

Before a conviction for storing jute in a ware-house without a license can be had under section 4 of Act II (B. C.) of 1872 proceedings should be taken under the provisions of Chapter XV of the Code of Criminal Procedure (Act XXV of 1861) as required by section 34 of the former Act.

Sagur Dutt in re, Reg. v. The Justices of the Peace, 1 B. L. R. O. Cr. 41.

Sagur Dutt was convicted before a Justice of the Peace for using a ware-house &c. in the Town of Calcutta for the keeping and storing of jute, other than screwed for shipment, without a license, and for his said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction in which the offence was continued. Held, that the conviction was bad.

TOLLS.

Narendronarain Sing & another, petitioners, 6 S. W. R. Cr. R. 48.

To justify a conviction under section 6, Act VIII of 1851 for illegal collection of a toll on a public road, the road must be a public road within the meaning of section 2 of the Act.

Uttom Chunder Gangooly v. Issur Chunder Mookerjee, 22 S. W. R. Cr. R. 76.

A charge of an illegal demand of toll under Act VIII of 1851, section 6 ought not to be dealt with summarily under Chapter XVIII of the Code of Criminal Procedure (Act X of 1872). The power of levying tolls under Act VIII of 1851 is vested in the Lieutenant-Governor of Bengal, and is restricted to levying tolls only at the toll bar: the establishment of a toll must be by some distinct resolution of the Government notified in some way or other by the Government.

The word "extortionately" in section 6, Act VIII of 1851, is not used in the same sense as it is used in the Penal Code, but as meaning an unlawful demand to toll accompanied by pressure:—the pressure in this case being the exercise of the powers indicated in section 3 of the Act by seizing the complainant's horses and carts and detaining them until the toll was paid.

Govinda Rajulu v. Lakshuman, 6 I. L. R. Mad. 37.

Under the Local Funds Act (Madras Act IV of 1871) tolls are only leviable at toll-bars, and tolls are not leviable on carts which enter a circle by a public road on which there is no toll-bar.

Quære:—Whether toll would not be leviable on a cart approaching a toll-bar and to evade payment making a *detour* otherwise than by a road available to the public.

WHIPPING.

Reg. v. Abdool Khitmutgar, S. W. R. 1864, Cr. R. 38.

In the case of adults on a first conviction, or in the case of juvenile offenders, whether for a first offence or otherwise, whipping can only be in lieu of any other punishment.

Reg. v. Amarut Sheikh, 4 S. W. R. Cr. R. 20.

In order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases.

Reg. *v.* Kantiram and Meekeer, 1 S. W. R. Cr. R. 24. Reg. *v.* Tonaokoch, 2 S. W. R. Cr. R. 63.

Reg. v. Kantiram & Meekeer, 1 S. W. R. Cr. R. 24; Reg. v. Amarut Sheikh, 4 S. W. R. Cr. R. 20.

Whipping cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment.

Reg. v. Shaik Fyze, Bourke's Rep. O. C. 269.

Act XIII of 1856, section 27 gives a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gives both is illegal.

Reg. v. Tonaokoch, 2 S. W. R. Cr. R. 63.

Section 3, Act VI of 1864 does not allow of whipping in addition to imprisonment in the case of a first conviction.

Reg. v. Udai Patnaik & others, 12 S. W. R. Cr. 68; S. C. 4 B. L. R. Cr. Ap. 5.

A sentence of whipping under section 4, Act VI of 1864 can only be inflicted in addition to other punishment on a second conviction of the offence specified therein, when the first offence was committed some time previous to the second conviction though after the passing of the Indian Penal Code.

Maniruddin v. Gaur Chandra Shamadar, 7 B. L. R. 165 F. B. 15 S. W. R. Cr. R. 89.

Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under section 342, six months' imprisonment for the offence of voluntarily causing grievous hurt under section 325 and to whipping with twenty stripes for the offence of theft, under section 378 of the Indian Penal Code, it was held (KEMP and PHEAR, JJ. dissenting) that the sentence was legal. Where a person is convicted at the same time of two or more offences punishable under the Indian Penal Code, held (KEMP and PHEAR, JJ. dissenting) that it is lawful for the Court, in addition to the penalties prescribed by the Penal Code, to sentence the prisoner to whipping.

Nassir *v.* Chunder not followed.

Nassir v. Chunder & others, 9 S. W. R. Cr. R. 41 B. L. R. Sup. Vol. 951 F. B.

Held by the majority, that when a person who has not been "previously convicted" (*vide* section 4, Act VI of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, *in addition to* imprisonment or fine for the other or others; but it is not illegal to sentence him to *one* whipping *in lieu of all other punishment.* Held, further, that when a

person who has been "previously convicted," is convicted at one time of two or more offences, he may be punished with one, but only *one* whipping, *in addition to* any other punishment to which, under section 46 of the Code of Criminal Procedure (Act XXV of 1861) he may be liable.

Ruttun Bewa v. Buhur Jhowla v. Buhur, 14 S. W. R. Cr. R. 7.

Follows the Full Bench decision (9 S. W. R. Cr. R. 41) ruling that when a person who has been previously convicted (section 4, Act VI of 1864) is a second time convicted at one time of two or more offences he may be punished with only one whipping in addition to any other punishment to which, under section 46 of the Code of Criminal Procedure (Act XXV of 1861) he may be liable.

Hurchundra Kulal v. Jafer Ali, 20 S. W. R. Cr. R. 72.

In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. On the recommendation of the Sessions Judge (who referred to sections 305 and 310, Act X of 1872) the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out.

Reg. v. Esanchunder Dey, 21 S. W. R. Cr. R. 40.

A sentence of whipping cannot, with reference to Act VI of 1864, section 7 be passed on a conviction for theft under section 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years.

Empress v. Partab, 1 I. L. R. All. 666.

P. was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and, on the expiration of the term of imprisonment, to furnish security for good behaviour. Held that the offence of theft not being the same offence as that of dishonestly receiving stolen property, the punishment of whipping was illegal. Held also, with some hesitation, that there was evidence as to general character adduced before the Magistrate which justified him in dealing with P. under section 505 of Act X of 1872. Held, also, that the order requiring security should not have formed part of the sentence for the offence of which P. was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied, from the evidence as to general character adduced before him in the case, that P. was by repute an offender within the terms of section 505 of Act X of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of the imprisonment, P. should be brought up for the purpose of being bound.

Proceedings of the High Court, dated 19th April 1876, 1 I. L. R. Mad. 56.

A sentence of whipping passed on a person who is already under sentence of death, or transportation, or penal servitude, or imprisonment for more than five years, is illegal. If the sentence of whipping precede, instead of follow, the other sentence, the passing of the latter sentence renders the infliction of the whipping illegal.

Badiya v. The Queen, 5 I. L. R. Mad. 158.

When an accused person is liable to be punished under the Whipping Act, 1864, the charge must state the liability and the judgment should set out the grounds thereof when that punishment is imposed.

Proceedings of 25th July, 1864. 3 Mad. Rep. App. 1.

Meaning of the words "execution shall be stayed" in section 11, Act VI of 1864.

Proceedings of 25th Oct., 1869. 5 Mad. Rep. Rul. 1.

A sentence of whipping founded on a previous conviction of the prisoner is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. A Sessions Judge has no power to suspend a sentence in a case in absence of appeal.

Proceedings of 28th Oct., 1870. 5 Mad. Rep. Rul. 39.

The Magistrate convicted the accused under section 380 of the Pena Code, and a previous conviction having been proved under section 379 of the Penal Code, sentence of imprisonment and whipping was passed. Held, that in order to justify the sentence of whipping the previous conviction should have been in respect of the same specific offence.

Proceedings of 13th Nov., 1871. 6 Mad. Rep. Rul. 38.

A sentence of flogging cannot be carried out after the expiry of the limit of 15 days from date of sentence provided in section 9 of Act VI of 1864.

Proceedings of 10th Dec., 1873. 7 Mad. Rep. Rul. 30.

The ruling of the High Court (Proceedings 13th November 1871) reported at 6 M. H. C. R. appendix 38 is still applicable to section 310 of the new Criminal Procedure Code (Act X of 1872).

Reg. v. Surya bin Krishna Mandavkar, 3 Bom. Rep. Crown Cases, 38.

On a reference by a Sessions Judge, under section 434 of the Criminal Procedure Code (Act XXV of 1861), a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in section 2 of Act VI of 1864 (Whipping Act), was annulled: as the offence was not *committed* after previous conviction.

Reg. v. Babji valad Bapu, 4 Bom. Rep. Crown Cases, 5.

On a reference by a Sessions Judge under section 434 of the Criminal Procedure Code, (Act XXV of 1861), a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in section 4 of Act VI of 1864 (Whipping Act) was annulled; as the prisoner had not been previously convicted of the same offence.

Reg. v. Changia valad Shumia, 7 Bom. Rep. Crown Cases, 68.

A prisoner convicted of "theft in a dwelling house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping under Act VI of 1864, section 3.

Reg. v. Kusa valad Lakshman, 7 Bom. Rep. Crown Cases, 70.

Section 3 of Act VI of 1864 (The Whipping Act) applies to juvenile as well as to adult offenders. That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction.

Reg. v. Muhammad Ali valad Abdul Ali, 8 Bom. Rep. Crown Cases, 9.

Under Act VI of 1864 (The Whipping Act) a juvenile offender means a person under the age of sixteen years.

Reg. v. Nuzee Nushyo, 15 S. W. R. Cr. R. 52.

As a rule, before flogging is given as an additional punishment there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way, a mere kyfeut is no evidence whatever.

Reg. v. Yella valad Parshia, 3 Bom. Rep. Crown Cases, 37.

In the case of a conviction of attempting to commit house-breaking by night, with intent to commit theft, a sentence of whipping was annulled as being illegal.

R. v. Abdool Khidmutgar, S. W. R. 1864, Cr. R. 38.

In the case of adults on a first conviction, or in the case of juvenile offenders whether for a first or any other offence, whipping can only be *in lieu* of any other punishment.

Proceedings of 30th April 1880. Weir, 326.

The provisions of section 302A. apply only to Courts inferior to a Sessions Court. It is not therefore competent to a Sessions Court to direct that a sentence of whipping be inflicted at any place other than the jail of the district.

Proceedings of 3rd Feb. 1880. Weir, 343.

When the execution of a sentence of whipping has been postponed on the ground that the prisoner has been under medical treatment, the High Court will not pass an order that the sentence be carried out as soon as the prisoner is fit to undergo the punishment. The effect of such an order might be to postpone for an indefinite time the infliction of the punishment.

Proceedings of 28th Nov. 1878. Weir, 344.

The immediate execution of a sentence of whipping is not illegal in a case in which in the same trial whipping is imposed for one distinct offence aud imprisonment for another.

A sentence of fine cannot be substituted for a sentence of whipping which has been prevented from being carried into execution.

Proceedings of 9th Jan. 1879. Weir, 345.

A sentence of whipping in addition to imprisonment on a second conviction for the offence of theft is illegal unless the previous conviction has been set out in the charge.

Proceedings of 3rd Feb. 1874. Weir, 372.

To justify a sentence of whipping, the previous and subsequent convictions must be of the same specific offences.

Proceedings of 25th Nov. 1864. Weir, 640.

The ruling in High Court Proceedings of 25th November 1864 overruled.

Whipping cannot be awarded on a second conviction when the latter is for an offence committed previous to a former conviction.

Proceedings of 11th Aug. 1881. Weir, 640.

The enhanced punishment of whipping and imprisonment must not be adjudged in the absence of strict proof of the circumstances under which the liability arises. An admission of a previous conviction of the same offence does not in itself authorize a sentence of whipping.

Proceedings of 12th Sept. 1876. Weir, 642.

Where an accused not being a person previously convicted of either of the offences was convicted of two separate offences committed on one occasion (sections 454 and 380 I. P. C.) and was sentenced to be rigorously imprisoned for 6 months and to receive 50 lashes, it was held that as whipping might have been awarded for either of the offences, it was open to the High Court to amend the sentence by allocating a sentence of imprisonment to one of the offences and a sentence of whipping to the other.

Proceedings of 3rd April 1880. Weir, 643.

A sentence of whipping is not illegal because a conviction of some additional offence is combined with a second conviction of the same specific offence.

Proceedings of 27th Dec., 1880. Weir, 644.

Where an illegal sentence of whipping and imprisonment has been passed and the whipping has been carried into execution and where the sentence as a whole is unduly lenient, the High Court will not necessarily set aside the sentence of imprisonment.

Indla Kondadu, accused. Weir, 644.